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on the History of Women
in America

This river is navigable for medium-class boats to the foot of the Muscle shoals in Alabama, and is open to navigation all the year, while the distance is but two hundred and fifty miles by the river from Paducah, on the Ohio. The Tennessee offers many advantages over the Mississippi. We should avoid the almost impregnable batteries of the enemy, which cannot be taken without great danger and great risk of life to our forces, from the fact that our boats, if crippled, would fall a prey to the enemy by being swept by the current to him and away from the relief of our friends. But even should we succeed, still we will only have begun the war, for we shall then have to fight to the country from whence the enemy derives his supplies.

Now, an advance up the Tennessee river would avoid this danger, for, if our boats were crippled, they would drop back with the current and escape capture.

But a still greater advantage would be its tendency to *cut the enemy's lines in two*, by reaching the Memphis and Charleston railroad, threatening Memphis, which lies one hundred miles due west, and no defensible point between; also Nashville, only ninety miles northeast, and Florence and Tuscumbia, in north Alabama, forty miles east. A movement in this direction would do more to relieve our friends in Kentucky and inspire the loyal hearts in east Tennessee than the possession of the whole of the Mississippi river If well executed, it would cause the evacuation of all those formidable fortifications on which the rebels ground their hopes of success; and, in the event of our fleet attacking Mobile, the presence of our troops in the northern part of Alabama would be material aid to the fleet.

Again, the aid our forces would receive from the loyal men in Tennessee would enable them soon to crush the last traitor in that region, and the separation of the two extremes would do more than one hundred battles for the Union cause.

The Tennessee river is crossed by the Memphis and Louisville railroad and the Memphis and Nashville railroad. At Hamburg the river makes the big bend on the east, touching the northeast corner of Mississippi, entering the northwest corner of Alabama, forming an arc to the south, entering the State of Tennessee at the northeast corner of Alabama, and if it does not touch the northwest corner of Georgia, comes very near it. It is but eight miles from Hamburg to the Memphis and Charleston railroad, which goes through Tuscumbia, only two miles from the river, which it crosses at Decatur, thirty miles

above, intersecting with the Nashville and Chattanooga road at Stephenson. The Tennessee river has never less than three feet to Hamburg on the "shoalest" bar, and, during the fall, winter, and spring months, there is always water for the largest boats that are used on the Mississippi river. It follows from the above facts that in making the Mississippi the key to the war in the West, or rather in overlooking the Tennessee river, the subject is not understood by the superiors in command.

That this plan as suggested was adopted, we submit the following letter from Hon. Thomas A. Scott, then Assistant Secretary of War:

Hon. JACOB M. HOWARD, *United States Senate:*

On or about the 30th of November, 1861, Miss Carroll, as stated in her memorial, called on me as Assistant Secretary of War, and suggested the propriety of abandoning the expedition which was then preparing to descend the Mississippi river, and to adopt instead the Tennessee river, and handed to me the plan of campaign, as appended to her memorial, which plan I submitted to the Secretary of War, and its general ideas were adopted. On my return from the Southwest, in 1862, I informed Miss Carroll, as she states in her memorial, that through the adoption of this plan the country had been saved millions, and that it entitled her to the kind consideration of Congress.

THOS. A. SCOTT.

PHILADELPHIA, *June* 24, 1870.

The affidavit of Hon. Lemuel D. Evans, of Marshall, Texas, at present chief justice of that State, shows that he was intrusted by our Government with a confidential mission to the Mexican border on the Lower Rio Grande, and in the autumn of 1861 proceeded to St. Louis, the then headquarters of the Army of the Southwest, and as the success of his mission depended on the movements of the army in that military department, it became his business to obtain accurate information, and with that object in view he remained in St. Louis until some time in November. This deponent states that Miss Carroll was in St. Louis in October and November, seeking information, as

she claimed and as he believes, in aid of the Union; that he held many conversations with her on the military and political situation; that there was boarding in the same hotel with Miss Carroll a Mrs. Scott, a lady who seemed well informed as to what was going on, and whose husband was then a pilot on the steamer Memphis, one of the transports in the expedition designed to descend the Mississippi.

A few days after the battle of Belmont this gentleman, Mr. Scott, came to the hotel, when Miss Carroll sought and obtained an interview through his wife, and becoming impressed with the value of his special knowledge, she requested deponent to join in the interview and to interrogate Mr. Scott, which he did at great length, in regard to the Mississippi, the Tennessee, and Cumberland rivers; and in reply he stated that it was his opinion, in which all the pilots connected with the expedition concurred, that it would be next to impossible to open the Mississippi with the gunboats. He mentioned one pilot who had been familiar with these waters for forty years. He stated that it was entirely practicable for the gunboats to ascend, at favorable stages of water, the Cumberland to Nashville, and, at all stages, the Tennessee to the foot of the Muscle shoals. Miss Carroll requested Mr. Scott to write down for her the principal facts she had elicited, and also requested him to communicate to her his observations during his connection with the expedition, to do which he at first declined, on the ground of defective education, as he alleged, but finally he consented. On Miss Carroll's return from the West, she prepared and submitted to deponent for his opinion the plan of the Tennessee River expedition as set forth in her memorial. Being a native and resident of that section, and intimately acquainted with its geography, and particularly with the Tennessee river, deponent was convinced of the military importance of her

paper, and advised her to lose no time in laying the same before the War Department, which she did on or about the 30th of November, 1861.

On the 5th of January, 1862, Miss Carroll addressed the following letter to Hon. T. A. Scott:

Some weeks since, on my return from the West, I gave you my views of the Tennessee river, as being the true strategical key to overcome the rebels in the Southwest. That river is never obstructed by ice at any period of the coldest winter, while every year the Mississippi and Cumberland rivers sometimes are. Then the gunboats are not well fitted to retreat against the current of the western waters, and as their principal guns are placed forward, they cannot be so efficient against an enemy below them. They must fight with their two stern guns, or else lose all advantage of motion by anchoring by the stern, which will prevent the enemy feeling their range. The gunboats anchored would be at the mercy of the enemy. The Tennessee river, beginning at Paducah, fifty miles above Cairo, after leaving the Ohio, runs south-southeast, *across* rather than through Kentucky and Tennessee, until it reaches the Mississippi line, directly west of Florence and Tuscumbia, which are fifty miles east, and Memphis, one hundred and twenty-five miles west, with the Charleston and Memphis railroad eight miles from the river. There is no difficulty in reaching this point throughout the year; as I have said before to you, the water is at all times deeper at this point than the Ohio. Again, it is but ninety miles from Nashville, northeast from this. You can see by the map in what condition Buckner would be placed if we could make a strong advance up the Tennessee river He would be compelled to retreat from Kentucky, or if he did not, our forces could take Nashville in his rear, and compel him to lay down his arms.

Hon. B. F. Wade, ex-United States Senator and chairman of the "Committee on the Conduct of the War," states that—

He had always understood that it was the information Miss Carroll gave that caused the change in the expedition that was to be sent down the Mississippi river, *from* that river *to* the Tennessee; that a copy of Miss Carroll's paper was shown him

immediately after the success of the campaign, by the late Hon. Elisha Whittlesey, of Ohio; that he knows how highly the information and services of this lady were appreciated by President Lincoln and Secretary Stanton, and has heard them both say that she ought to be liberally rewarded; that Hon. Thos. A. Scott, then Assistant Secretary of War, will, no doubt, corroborate what he states, as well as many others; that he is glad to hear her claim is before Congress, and as her services were most beneficial to the Government, it is just, and he hopes will be liberally rewarded.

In preferring her claim, Miss Carroll says:

My claim to having originated this movement receives strong confirmation in the fact that no military man has ever controverted it. It is not to be doubted that no educated gentleman could have been ignorant of the fact that the Tennessee was a navigable river, and run from the very center of the rebellion north through the States of Tennessee and Kentucky, but the significance of this knowledge had not awakened the attention of any one, and my special claim to merit is that I was the first to point out to the Government how this knowledge could be made available. In preferring my claim to this, I cannot, by any possibility, detract from our brave and heroic commanders, to whom the country owes so much, and, so far from opposing me, I believe that, as a class, they would be gratified to see me or any one properly rewarded according to the part performed in this mighty drama.

From the high social position of this lady and established ability as a writer and thinker, she was prepared at the inception of the rebellion to exercise a strong influence in behalf of liberty and Union. That it was felt and respected in Maryland during the darkest hours in that State's history there can be no question. Her publications throughout the struggle were eloquently and ably written and widely circulated, and did much to arouse and invigorate the sentiment of loyalty in Maryland and other border States. It is not too much to say that they were among the very ablest publications of the time, and exerted a powerful influence upon the hearts of the people.

Some of these publications were prepared under the auspices of the War Department, and for these Miss Carroll preferred a claim to reimburse her for the expenses incurred in their publication, which ought to have been paid; and as evidence of this we subjoin the following statement from the Assistant Secretary of War:

PHILADELPHIA, *January* 28, 1863.

All my interviews with Miss Carroll were in my official capacity as Assistant Secretary of War. The pamphlets published were, to a certain extent, under a general authority then exercised by me in the discharge of public duties as Assistant Secretary of War. No price was fixed, but it was understood that the Government would treat her with sufficient liberality to compensate her for any service she might render.

On the 15th of June, 1870, Hon. Thomas A. Scott addressed a letter to Hon. J. M. Howard, U. S. Senate, in which he says:

I learn from Miss Carroll that she has a claim before Congress for services rendered in the year 1861 in aid of the Government. I believe, now, that the Government ought to reward her liberally for the efforts she made in its behalf to rouse the people against the rebellious action of the South. I hope you will be able to pass some measure that will give Miss Carroll what she is certainly entitled to.

THOS. A. SCOTT.

In view, therefore, of the highly meritorious services of Miss Carroll during the whole period of our national troubles, and especially at that epoch of the war to which her memorial makes reference, and in consideration of the further fact that all the expenses incident to this service were borne by herself, the committee believe her claim to be just, and that it ought to be recognized by Congress, and consequently report a bill for her relief.

46TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 386.

ANNA ELLA CARROLL.

MARCH 3, 1881.—Committed to the Committee of the Whole House and ordered to be printed.

E. S. BRAGG, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 7256.]

The Committee on Military Affairs, to whom the memorial of Anna Ella Carroll was referred, asking national recognition and reward for services rendered the United States during the war between the States, after careful consideration of the same, submit the following:

In the autumn of 1861 the great question as to whether the Union could be saved, or whether it was hopelessly subverted, depended on the ability of the Government to open the Mississippi and deliver a fatal blow upon the resources of the Confederate power. The original plan was to reduce the formidable fortifications by descending this river, aided by the gunboat fleet, then in preparation for that object.

President Lincoln had reserved to himself the special direction of this expedition, but before it was prepared to move he became convinced that the obstacles to be encountered were too grave and serious for the success which the exigencies of the crisis demanded, and the plan was then abandoned, and the armies diverted up the Tennessee river, and thence southward to the center of the Confederate power.

The evidence before this committee completely establishes that Miss Anna Ella Carroll was the author of this change of plan, which involved a transfer of the national forces to their new base in North Mississippi and Alabama, in command of the Memphis and Charleston railroad; that she devoted time and money in the autumn of 1861 to the investigation of its feasibility is established by the sworn testimony of L. D. Evans, chief justice of the supreme court of Texas, to the Military Committee of the United States Senate in the Forty-second Congress (see pp. 40, 41 of memorial); that after that investigation she submitted her plan in writing to the War Department at Washington, placing it in the hands of Col. Thomas A. Scott, Assistant Secretary of War, as is confirmed by his statement (see p. 38 of memorial); also confirmed by the statement of Hon. B. F. Wade, chairman of the Committee on the Conduct of the War, made to the same committee (see p. 38), and of President Lincoln and Secretary Stanton (see p. 39 of memorial); also by Hon. O. H. Browning, of Illinois, Senator during the war, in confidential relations with President Lincoln and Secretary Stanton (see p. 39, memorial); also that of Hon. Elisha Whittlesey, Comptroller of the Treasury (see p. 41, memorial); also by Hon. Thomas H. Hicks, governor of Maryland, and by Hon. Frederick Feckey's affidavit, comptroller of the public works of Maryland (see p. 127 of memorial); by Hon. Reverdy Johnson (see pp. 26 and 41, memorial), Hon. George Vickers, United States Senator from Maryland (see p. 41, memorial); again by Hon. B. F. Wade (see p. 41, memorial), Hon. J. T. Headley (see p. 43, memorial), Rev. Dr. R. J. Breckinridge on services (see p. 47, memorial), Professor Joseph Henry, Rev. Dr. Hodge, of Theological Seminary at Princeton (see p. 30, memorial); remarkable interviews and correspondence of Judge B. F. Wade (see pp. 23–26 of memorial).

That this campaign prevented the recognition of South-

ern independence by its fatal effects on the Confederate States is shown by letters from Hon. C. M. Clay (see pp. 40, 43 of memorial), and by his letters from St. Petersburg; also those of Mr. Adams and Mr. Dayton from London and Paris (see pp. 100–102 of memorial).

That the campaign defeated national bankruptcy, then imminent, and opened the way for the system of finance to defend the Federal cause is shown by the debates of the period in both houses of Congress; by the utterances of Mr. Spalding, Mr. Diven, Mr. Thaddeus Stevens, Mr. Roscoe Conkling, Mr. John Sherman, Mr. Henry Wilson, Mr. Fessenden, Mr. Trumbull, Mr. Foster, Mr. Garrett Davis, Mr. John J. Crittenden, &c., found for convenient reference in appendix to memorial, page 59. Also therein the opinion of the English press as to why the Union could not be restored.

The condition of the struggle can best be realized as depicted by the leading statesmen in Congress previous to the execution of these military movements (see synopsis of debates from Congressional Globe, pp. 21, 22 of memorial).

The effect of this campaign upon the country and the anxiety to find out and reward the author are evidenced by the resolution of Mr. Roscoe Conkling in the House of Representatives 24th of February, 1862 (see debates on the origin of the campaign, pp. 39–63 of memorial). But it was deemed prudent to make no public claim as to authorship while the war lasted (see Colonel Scott's view, p. 32 of memorial).

The wisdom of the plan was proven, not only by the absolute advantages which resulted, giving the mastery of the conflict to the national arms and ever more assuring their success, even against the powers of all Europe, should they have combined, but it was likewise proven by the failures to open the Mississippi or win any decided success on the plan first devised by the Government.

It is further conclusively shown that no plan, order, letter, telegram, or suggestion of the Tennessee river as the line of invasion has ever been produced except in the paper submitted by Miss Carroll on the 30th of November, 1861, and her subsequent letters to the Government as the campaign progressed.

It is further shown to this committee that the able and patriotic publications of memorialist in pamphlets and newspapers, with her high social influence, not only largely contributed to the cause of the Union in her own State, Maryland (see Governor Hicks's letters, p. 27, memorial), but exerted a wide and salutary influence on all the border States (see Howard's report, p. 33 and p. 75 of memorial).

These publications were used by the Government as war measures, and the debate in Congress shows that she was the first writer on the war powers of the Government (see p. 45 of memorial). Leading statesmen and jurists bore testimony to their value, including President Lincoln, Secretaries Chase, Stanton, Seward, Welles, Smith, Attorney General Bates, Senators Browning, Doolittle, Collamer, Cowan, Reverdy Johnson, and Hicks; Hon. Horace Binney, Hon. Benjamin H. Brewster, Hon. William M. Meredith, Hon. Robert J. Walker, Hon. Charles O'Conor, Hon. Edwards Pierrepont, Hon. Edward Everett, Hon. Thomas Corwin, Hon. Francis Thomas, of Maryland, and many others found in memorial.

The Military Committee, through Senator Howard, in the Forty-first Congress, third session, document No. 337, unanimously reported that Miss Carroll did cause the change of the military expedition from the Mississippi to the Tennessee river, etc.; and the aforesaid committee of the Forty-second Congress, second session, document No. 167, as found in memorial, reported, through the Hon. Henry Wilson, the evidence and bill in support of this claim.

Again, in the Forty-fourth Congress, the Military Com mittee of the House favorably considered this claim, and General A. S. Williams was prepared to report, and being prevented by want of time, placed on record that this claim is incontestably established, and that the country owes to Miss Carroll a large and honest compensation, both in money and in honors, for her services in the national crisis.

In view of all the facts, this committee believe that the thanks of the nation are due Miss Carroll, and that they are fully justified in recommending that she be placed on the pension-rolls of the Government, as a partial measure of recognition for her public service, and report herewith a bill for such purpose and recommend its passage.

Hon. E. M. Stanton came into the War Department, in 1862, pledged to execute the Tennessee campaign.

Statement from Hon. B. F. Wade, chairman of the Committee on the Conduct of the War, April 4, 1876.

DEAR MISS CARROLL: I had no part in getting up the committee; the first intimation to me was that I had been made the head of it. But I never shirked a public duty, and at once went to work to do all that was possible to save the country. We went fully into the examination of the several plans for military operations then known to the Government; and we saw plainly enough that the time it must take to execute any of them would make it fatal to the Union

We were in the deepest despair, until just at this time Colonel Scott informed me that there was a plan already devised that, if executed with secrecy, would open the Mississippi and save the national cause. I went immediately to Mr. Lincoln and talked the whole matter over. He said he did not himself doubt that the plan was feasible, but said there was one difficulty in the way; that no military or naval man had any idea of such a movement, it being the work of a *civilian*, and none

of them would believe it safe to make such an advance upon only a navigable river with no protection but a gunboat fleet, and they would not want to take the risk. He said it was devised by Miss Carroll, and military men were extremely jealous of all outside interference. I plead earnestly with him, for I found there were influences in his cabinet then averse to his taking the responsibility, and wanted everything done in deference to the views of McClellan and Halleck. I said to Mr. Lincoln: "You know we are now in the last extremity, and you have to choose between adopting and at once executing a plan that you believe to be the right one and save the country or defer to the opinions of military men in command and lose the country." He finally decided he would take the initiative; but there was Mr. Bates, who had suggested the gunboat fleet, and wanted to advance down the Mississippi as originally designed, but after a little he came to see no result could be achieved on that mode of attack, and he united with us in favor of the change of expedition as you recommended.

After repeated talks with Mr. Stanton I was entirely convinced that if placed at the head of the War Department he would have your plan executed victoriously, as he fully believed it was the only means of safety, as I did.

Mr. Lincoln, on my suggesting Stanton, asked me how the leading Republicans would take it; that Stanton was so fresh from the Buchanan cabinet and so many things said of him. I insisted he was our man withal, and brought him and Lincoln into communication, and Lincoln was entirely satisfied; but so soon as it got out the doubters came to the front, Senators and members called on me. I sent them to Stanton and told them to decide for themselves. The gunboats were then nearly ready for the Mississippi expedition, and Mr. Lincoln agreed, soon as they were, to start the Tennessee movement. It was determined that soon as Mr. Stanton came in the department that Colonel Scott should go out to the western armies and make ready for the campaign in pursuance of your plan, as he has testified before committees.

It was a great work to get the matter started; you have no idea of it. We almost fought for it. If ever there was a righteous claim on earth, you have one. I have often been sorry that, knowing all this, as I did then, I had not publicly declared you as the author. But we were fully alive to the importance of absolute secrecy. I trusted but very few of our

people, but to pacify the country I announced from the Senate that the armies were about to move and inaction was no longer to be tolerated, and Mr. Fessenden, head of the Finance Committee, who had been told of the proposed advance, also stated in the Senate that what would be achieved in a few more days would satisfy the country and astound the world.

As the expedition advanced Mr. Lincoln, Mr. Stanton, and myself frequently alluded to your extraordinary sagacity and unselfish patriotism, but all agreed that you should be recognized for your most noble services, and properly rewarded for the same. The last time I saw Mr. Stanton he was on his deathbed; he was then most earnest in his desire to have you come before Congress, as I told you soon after, and said if he lived he would see that justice was awarded you. This I have told you often since, and I believe the truth in this matter will finally prevail.

B. F. WADE.

PREFACE

TO THE SECOND VOLUME OF MISS CARROLL'S BIOGRAPHY.

The first volume of the Biography was written and published in the winter of 1890–'91.

It was undertaken at the desire of many friends, that work so remarkable in aid of the Union cause during the Civil War should be put upon permanent record.

In carrying out that project Miss Mary Henry Carroll gave valuable aid by furnishing at our request facts of personal history.

At first we feared to make our work known to Miss Anna Ella Carroll, owing to her invalid condition and the danger of causing her excitement, but on receiving the advanced sheets we concluded to submit them to her inspection that we might be satisfied as to their entire accuracy.

As the relation progressed we felt that the papers written under Government auspices should be given in full. They were difficult to obtain as, owing to Miss Carroll's long illness and subsequent removals, the copies had not been preserved. After considerable inquiry it was ascertained that Charles Sumner had included Miss Carroll's pamphlets in the collection donated by him to the Law School of Harvard College.

Two editions of the War Powers were also found side by side in the library of the State Department at Washington. The librarian kindly allowed them to be copied by Miss Isabel Howland, who gave her valuable assistance out of

love for the cause. The short article on the suspension of the writ of *habeas corpus* was taken from one of Miss Carroll's memorials published by order of Congress. The "Reply to Breckinridge" and the "Relation of the Revolted Citizens" were copied at the Harvard Library by order of the librarian. On receiving the papers it was suggested to Miss Carroll that it would add to their interest if she would write a short note for each one, stating under what circumstances it was written. It was an agreeable surprise to receive from her a few days after the graphic short notes now prefacing each article. The bill for writing the pamphlets was presented by Miss Carroll in 1862. It was accompanied by letters from the most distinguished lawyers of the day, certifying that the charge was not only moderate but altogether "too small" for the work accomplished. Yet it remained unpaid, and when the case finally came before the Court of Claims, in 1885, during Miss Carroll's severe illness, the payment was again postponed on the ground that the papers should have been produced, that they might have been valued by the court. As they were not then at hand, the case was remitted to Congress for its consideration—a consideration which has never yet been accorded or the bill paid. This fact seemed to make it all the more desirable that the papers should be collected and republished They form also a valuable addition to the records of the war and as such we commend them to the attention of the future historian.

S. ELLEN BLACKWELL,

DECEMBER, 1894. 1708 F St., Washington, D. C.

CHAPTER I.

[Note written by Miss Carroll, in the spring of 1891, in her seventy-sixth year, to accompany the republication of her "Reply to Breckinridge."]

The Hon. John C. Breckinridge was a warm personal friend. I saw much of him during his term as Vice-President and felt an unaccountable interest in him, possibly in a degree augmented by my friendship for his uncle, the Rev. Dr. Robert J. Breckinridge, my former pastor. I regarded him as a Union man, and this impression was well fixed in my mind from the repeated conversations with him in 1860. He was elected to the U. S. Senate almost immediately, if I remember aright, after he retired from the Vice-Presidency. I was present when he took the oath of office. It was on the 4th of March, when Abraham Lincoln became President of the United States. Mr. Breckinridge looked up and saw me as he was sworn in, and I smiled approval of the act, which I then thought equivalent to an open declaration for the Union. My surprise was therefore unmeasured when, a few days after, he made the finished speech in which he declared himself an uncompromising advocate of secession. I could scarcely realize this sad and solemn fact, in face of the past. His speech was mainly addressed to the border States, and especially to Maryland, where he had many friends and admirers. I at once perceived its baneful influence in my own State, and, without a moment's hesitation, determined to reply to it, and did so to the best of my ability, as will be seen by the following pamphlet, which seemed to have some effect in thwarting the wishes and designs of the Secession party.

A. E. CARROLL.

Reply to the Speech of Hon. J. C. Breckinridge, Delivered in the United States Senate July 16th, 1861.

By ANNA ELLA CARROLL, of Maryland.

WASHINGTON:
PRINTED BY HENRY POLKINHORN,
1861.

NOTE.—This article was written some weeks since, and was designed for the newspaper press. Its length made it "too voluminous" for that source of publication, and at the solicitation of many distinguished friends it now appears in the present form. A. E. C.

MARYLAND, *September 9th*, 1861.

REPLY.

I had read with pain the speech of the Hon. John C. Breckinridge, delivered recently in the United States Senate, and with still deeper pain I now see him descending from his high position as a Senator and come to Maryland, to use the fallacies of that speech, for the purpose of stimulating and strengthening the Confederate rebellion. I see him addressing the passions of the crowd, as they cheer "Davis and Beauregard," and evidently his purpose is to excite the military uprising of the people in this State against the Government, in aid of Southern treason, and to prepare them for action whenever the leaders shall give the signal.

I have in the spirit of friendship repeatedly repelled by my pen the charge of disunion heretofore made against him. I could not bring myself to believe that one belonging to

a family so illustrious in our annals as his own could now be willing to alienate our blessed political heritage. When I also witness the devoted patriotism of his great and gifted uncle (Rev. Dr. R. J. Breckinridge) in the present struggle for constitutional liberty, I cannot but feel sorrow that one who has enjoyed under this Government every degree of elevation but the Presidency, and to whom so large a portion of the American people have hitherto looked with confidence and hope, should at last prove himself recreant to the Union's cause.

In his senatorial speech, to which he refers so vauntingly, he charges that the "President, in violation of the Constitution, made war on the Southern States for subjugation and conquest, has increased the army and navy, called forth the militia, blockaded the Southern ports, suspended the writ of *habeas corpus*, and without warrant arrested private persons, searched private houses, seized private papers and effects," &c. And now, in his Baltimore speech, he asserts that the State of Maryland is abolished, and that her people are "under the shadow of a broad-spreading military despotism." With splenetic acerbity and the skill of the demagogue, he reiterates the charge of arrest without warrant of citizens in this State.

These are grave charges, and if true the President should be made to suffer the extreme penalty of the law.

I shall not refer to the "small band," including Messrs. Powell, Polk, Kennedy, *id genus omne*, whom he says "*would* be heard in the Senate on the personal and political rights of the people," but confine my remarks to Mr. Breckinridge himself.

The argument turns wholly on the question of *fact*, whether the overt act of treason which the Constitution defines to be levying war against the United States has been committed; whether the Confederate States of the South commenced the war.

But, granting his main proposition, that the President has been guilty of making the war (the sad realities of which are before us), it is not less the duty of every American citizen to stand by his country and sustain the Government until the war is terminated by an honorable peace.

There can be no equivocal position in this crisis; and he who is not with the Government is against it and an enemy to his country. But the major premise of the Senator, namely, that the President made the war upon the South, is *untrue*, and I proceed to show that no one in America knows this better than that gentleman. So far, then, as his position as a Senator of the United States can serve, he has assumed the awful responsibility of conspiring for the overthrow of *his* Government, defending accomplices in their labors to dissolve it, and proclaiming the President a usurper for his efforts to preserve it.

Secret but powerful efforts to dissolve this Union have been made in the cotton States since 1831; but, on the 7th of May, 1849, under the instigation of Calhoun, then the chief conspirator, a meeting was held at Jackson, Mississippi, when the secession party formally organized to form a *Southern Confederacy* upon the first act of the General Government on which they could base a pretext. They there laid down their programme, which the conspirators of '60 and '61 have faithfully acted out.

After the death of Calhoun, in 1850, Senator Davis and his confederates in both branches of Congress agreed upon a provisional government and sketched a constitution for a Southern Confederacy! He managed by intrigue to have himself named as its president! This document and the proceedings of the conspirators found its way into the hands of Mr. Clay, but under such circumstances as forbade any public use of it.

In the running debate in the United States Senate, Mr. Clay made frequent pointed and personal allusions to Mr.

Davis, in order to draw forth some remark which would justify its public use; but Davis, undoubtedly suspecting the motive, studiously avoided giving him the opportunity. That constitution was similar to the one the traitors have now adopted, except that it specially provided for the acquisition of Cuba, Mexico, and all Tropical America.

General Quitman, however, was the recognized leader of the disunion party, and his correspondence as Governor of Mississippi with the prominent conspirators, especially in South Carolina, fully illustrates that programme and develops the treason movement of this day.

Writing to Governor Seabrook the 29th of September of that year, he said:

"Without having fully digested a programme of measures which I shall recommend to the Legislature, it may be of service to you to know that I propose to call a regular convention to take into consideration our Federal relations, with *full powers to annul the Federal compact, establish relations with other States*, and adapt *our organic law to such new relations*. Having no hope of an effectual remedy for existing and prospective evils but in separation from the Northern States, my view of State action will look to *secession*."

On the 28th of September, Governor McRae, of Mississippi:

"I have not acted without first looking at the ground before me, and I take the privilege of communicating to you in confidence thus early a hasty programme of our future movements. First, then, I believe there is no effective remedy for the evils before us but *secession*.

"My idea is that the Legislature should call a convention of delegates, elected by the people, fully empowered to take into consideration our Federal relations and to change or annul them, to adapt our organic law to such

new relations as they might establish, to provide for making compacts with other States, and that in the meanwhile an effective *military system* be established and patrol duties most rigidly enforced. In the meantime every patriot should leave no point untouched where his influence can be exerted. *Cheer on the faithful, strengthen the weak, disarm the submissionists*, send *a fiery cross through the land*, and send every gallant son of Mississippi to the rescue."

Governor Seabrook to Quitman, 23d October, 1850:

"Let me, however, reiterate the assurance that South Carolina is prepared to second Mississippi or any other State in any and every effort to arrest the career of a corrupt and despotic majority. She is ready and anxious for an immediate separation from a Union whose aim is the prostration of our political energies. May I hope Mississippi will begin the patriotic work and allow the *Palmetto banner* the privilege of a place in the ranks."

On December 17, 1850, Governor Seabrook to Quitman:

"I candidly confess to you that I am advocating the immediate action of the Legislature in order to suggest the first Monday in December next for the time and *Montgomery, Alabama*, as the place of the meeting of Congress. I am rejoiced that the house resolved to suggest to our Southern sister States the propriety of meeting in Congress at Montgomery on the 2d of January, 1852.

"For arming the State $350,000 has been put at the disposal of the Governor. I shall be happy to know that the time and place of the proposed Congress will be agreeable to Mississippi.

"If our movement be seconded by her I have good reason for the belief that Alabama, Florida, and Arkansas will soon follow the *patriotic* example."

Quitman to Colonel John S. Preston, of South Carolina, March 29, 1851:

"The plan proposed by the address of the central committee, which I have forwarded to you, is that the committee *demand redress* for past aggressions and guarantees against future assaults upon our rights, and in the meantime to provide for meeting our sympathizing sister States in a Southern Congress. The proposed redress is:

"1. A repeal of the law suppressing the slave trade in the Federal District.

"2. Opening of the Territories to the admission of States.

"3. Concessions of California south of 36° 30′.

"The guarantees to be amendments to the Constitution explicitly to protect slavery from hostile interference by Congress or States, and to restore equal taxation, direct and indirect.

"In case the address and guarantees be refused, the States to make formal propositions to their Southern sisters for a *separate* Confederacy, and to unite with any number of them sufficient to secure *national independence*. There are many of us who believe—indeed, are *well assured*—that neither the majority in Congress nor in the non-slaveholding States will assent to either of these just propositions unless demanded by the Southern States with a unanimity not to be expected; but still we think the propositions are due to our confederates *before we part with them*.

"I concur with you in the opinion that the political equality of the slaveholding States is incompatible with the present Confederation, as construed and acted on by the *majority*, and that the *present Union and slavery cannot coexist*.

"There's no hope whatever of united action beyond the *cotton States!* For my part I have long ceased to look beyond the cotton States for any united action. Indeed, I fear that the frontier States—I mean those bordering on

the free States—will never abandon the present *Union*, however great its oppressions, unless rudely driven from it by the North or *forced to choose between a Southern and a Northern Confederacy!*

"There is even danger in case of the assembling of a Southern Congress that Virginia, uniting with the other slaveholding States now disposed to submit, will attempt to force upon us some new 'compromise' to preserve the shadow of the Union when the substance is gone.

"If, therefore, the people of South Carolina have made up their minds to withdraw from the Union at all events, whether joined by other States or not, my advice would be to do so *without waiting for the action of any other State*, as I believe there would be more probability of favorable action on the part of the Southern States *after* her secession than before. So long as the several aggrieved States wait for one another, their action will be overcautious and timid. Great political movements, to be successful, must be *bold* and must meet practical and simple issues. There is, therefore, in my opinion, greater probability of the dissatisfied States *uniting with a seceded State* than of their union for the purpose of *secession*. The secession of a Southern State would startle the whole South, and *force* the other States to meet the issue plainly. It would present *practical* issues and exhibit everywhere wider-spread discontent than the politicians have imagined. In less than two years all the States south would unite their destiny with *yours*. Should the Federal Government attempt to employ force, an active and cordial union of the whole South would instantly be effected and a complete 'Southern Confederacy' organized."

Governor Means, of South Carolina, to General Quitman, May 15, 1851:

"There is not now the slightest doubt that the next Legislature will call the convention together at a period during

the ensuing year, and when *that* convention meets the State will *secede.* We are anxious for coöperation, and also desire that some other State should take the lead, but from recent developments we are satisfied that *South Carolina is the only State* in which sufficient unanimity exists to commence the movement. We will therefore *lead off,* even if we are to stand alone, but trust that our sister States will unite with us."

On the 15th of May, 1851, Colonel Maxy Gregg, of South Carolina, to General Quitman:

"Let them contend manfully for secession, and if beaten in the election they will form a minority so powerful in moral influence that when South Caroline secedes the *first drop of blood that is shed* will cause an irresistible popular impulse in their favor, and the *submissionists* will be *crushed.* Let the example be set in Mississippi, and it will be followed in Alabama and Georgia. Imparting and receiving courage from each other's efforts, the Southern rights men will be ready to carry everything before them in all the three States the moment the *first blow is struck in South Carolina.*"

General Quitman to Governor Means, May 25, 1851:

"Experience has fully demonstrated that united action cannot be had. The frontier slave States are even now indicating a disposition to cling to the Union at the hazard of their slave institution. They will not, in my opinion, unite in any effective remedy unless *forced to choose between a Northern and Southern Confederacy.*"

Governor Seabrook to General Quitman, June 9, 1851:

"The course of the convention will depend somewhat on our sister Southern States. If they affirm the right of secession and the *non-existence of a power to prevent a State from exercising it,* should South Carolina strike a decisive

blow, may she confidently rely on the undivided support of her present friends in your State?"

Governor Seabrook to Quitman, July 15, 1851:

"I speak advisedly when I say that *volunteers by thousands* are signifying their wish *to be received into our ranks.* Our final course will depend much on Mississippi. If she demands of the Central Government indemnity for the past and security for the future, South Carolina will undoubtedly second the movement.

"If this scheme fail, what then? Let the State proclaim to the world that at a time to be designated, say six months, she will withdraw from the Union. If Mississippi be not prepared to follow her example, a simple annunciation on her part that *any hostile attempt, direct or indirect, by Congress to prevent her* (South Carolina) *from exercising the rights of an independent nation, or to keep her in the Confederacy, would be considered by your Commonwealth a subversion of the fundamental principles on which the States confederated, and consequently a full release for her obligations in the Union.*"

Here we have every idea on which the conspirators are now acting—the calling of conventions; the withdrawal of South Carolina to *force the issue;* the assembling of the cotton States at Montgomery, Alabama; the organization of a Southern Confederacy; the forcing the border slave States to choose between a Northern and Southern Confederacy; the proposition even of the Crittenden compromise; the arming of the Southern States; the firing on Fort Sumter, with the hope of *drawing blood to cement the Southern States.*

Unfortunately, through Mr. Breckinridge, the original programme of tendering a compromise to the Northern States "*before parting with them*" was incorporated into the Crittenden compromise. Abusing the confidence re-

posed in him by Mr. Crittenden, he being in the entire interest of the traitors, artfully introduced into it the very platform on which the Secessionists had supported him for the Presidency. This was done to make its passage through Congress an impossible thing.

This was an audacious insult to every party but the supporters of Mr. Breckinridge, *per se*, because each of these parties had expressly repudiated the doctrine by an overwhelming vote of the American people at the presidential election. But the *people* were clamorous for the salvation of the Union, and without reference to this objectionable feature they at once committed themselves to the proposition, and when it was rejected thousands at the South went over to secession. Men who in voting for Bell or Douglas had planted themselves defiantly against that doctrine were unwittingly cheated and captured by the dastardly secession *maneuver*.

An illustration of the use made of the Crittenden compromise may be proper. The State of Georgia passed an ordinance of secession in convention, but agreed to refer it to the people. During the canvass it became apparent that the people would *defeat* it, and the Secessionists resorted to the strategy of *agreeing to abide by the Crittenden compromise* in order to commit the Union party to the measure, and Toombs returned to the Senate for the purpose of *defeating* that compromise while ostensibly favoring it.

There was a majority in the Senate committee of thirteen in favor of its passage had *the Secessionists voted for it.* They went into that committee with the express design (as they afterward boasted) of entrapping the opposition into a vote rejecting the proposition. They assumed in committee that as the compromise was a tender to the South, the North should make the terms, and thereby declined to vote with such a supercilious bearing as to constrain Northern

men to reject it *in toto*. One of the conspirators then jesuitically *suggested* that they had better adopt the "Chicago platform," when some of the Republicans most unwisely assented; whereupon the Secessionists hurried off telegrams to all parts of Georgia that "*all hope of compromise is gone. The Crittenden proposition has been rejected and the Chicago platform adopted as the ultimatum.*" The people were thus deceived by these lying dispatches and the Union party was silenced and subdued.

The doctrine found in Seabrook's letter is the doctrine of the conspirators today, that *the Government cannot use force against a State;* and, if so, it is an act of war. This fatal idea was introduced by Buchanan in his message in December, and, whether by his own treachery or by the traitorous advisers who controlled his administration, it thrust a knife into the ribs of the Constitution, which is now pouring out its life's blood. Had he been true to his oath and exercised his constitutional authority he would have sent a military force to South Carolina, as General Jackson did in 1833, to suppress the rebellion, and enabled men to rally to the flag of the Union throughout the South.

It was on this heretical idea, that the General Government cannot use force in a State to execute *its* laws, that Virginia, Tennessee, North Carolina, and Arkansas seceded. Mr. Breckinridge, in connection with Magoffin, used the doctrine in his State; Jackson did so in Missouri, and the Secession party in Maryland.

The Southern people in 1851 would not sustain the leaders in sufficient strength to enable them to carry out their treasonable designs at that period. These men, therefore, went into the Democratic party to expedite their ambitious and wicked designs against the Union. They were in the Baltimore convention in 1852, and forced the Virginia and Kentucky resolutions into the Democratic plat-

form in order to commit the party stealthily to the doctrine of secession. They then secured the nomination of Franklin Pierce, and thereby controlled his administration. The same party procured the nomination of Buchanan, and took the stand that they never would surrender the power. They openly proclaimed that if Frémont was elected they would dissolve the Union. That opportunity having been lost, it is not necessary to say here how the administration of Buchanan was improved to their advantage. It is also a matter of too recent occurrence to adduce the proof that the delegations from the cotton States were instructed to go into the Charleston convention to plant their right to the protection of slave property in the Territories, and, failing in that, to secede and nominate a candidate representing their peculiar views. *They failed* and adjourned to Richmond; but, finding only the delegates of the cotton States in attendance, they feared to risk a nomination, and adjourned temporarily, sending a portion of their members to Baltimore under the jesuitical pretense of harmonizing the Democratic party. Their real purpose was to draw recruits from the border slave States, which being accomplished, they again seceded and nominated Mr. Breckinridge; then, returning with his name to Richmond, they *renominated* him, and he thus became the disunion candidate *per se*, formally accepting the same.

The object of that nomination was, if they should fail in the election, *to prevent by armed force* the inauguration of a Republican President. They had planned to inaugurate Breckinridge. I have the avowal of one of the conspirators, who, when asked if Breckinridge assented, replied, "We have not asked him, but he accepted our nomination and of course will carry out our views."

In fact, they addressed to the ambition of the Vice-President the exciting language of Maxy Gregg to General Quitman in 1851:

"In this great struggle the South wants a great leader, with the mind and the name to impel and guide revolution. *Be that leader*, and your place in history will remain conspicuous for the admiration of all ages to come."

The chiefs of the conspirators went to Washington after the election and assumed the direction of the entire treason movement, and proceeded to organize a military force for the purpose of seizing the Government, expelling Lincoln, and inaugurating Breckinridge; but failing to secure Maryland and Virginia by ordinances of secession, they fell back in January upon their original programme, and they directed the seceded States to assemble in convention at Montgomery, Alabama, on the 4th of February, for the purpose of installing the provisional government organized at Washington, with Senator Davis at its head. They resolved to seize the entire property belonging to the General Government in the Southern States, and to retain in their seats a sufficient number of Senators from the seceded States to embarrass any legislation of Congress which might be inimical to their movements, and to act as spies upon the Government. They improvised armies and continued to exercise all the functions of the provisional government until its formal installation at Montgomery on the 4th of February.

I have it upon the authority of a Senator who was present that Mr. Breckinridge united with the conspirators in their consultations and gave to them the influence and sanction of his high position. It is a phenomenon in the history of governments without a parallel, and will be an everlasting disgrace upon our civilization, that cabinet ministers, the Vice-President, Senators, and members of Congress should for weeks and months, by the apparent sanction of the President of the United States, have wielded the powers of an organized rebellion for the overthrow of the Constitution and Government they had sworn to support! Our

fathers never could have anticipated this catastrophe. They never dreamed of this parricidal assault upon the Constitution! They wisely provided for the alteration, change, or amendment of our Government whenever a majority of the people in the whole United States willed it, or that two-thirds of the States demanded it; but they never foresaw that a few atrociously corrupt men would rise, without regard to the will of the majorities in their several States, and perpetrate the crime of double treachery against their State and Federal Governments!

After the formal meeting of the Confederate Government and the inauguration of Mr. Davis at its head, they continued the augmentation of the army by recruits from all the Southern States, including Maryland and the District of Columbia. They invested Fort Pickens, stormed Fort Sumter, and put in motion a formidable army for the capture of Washington and the overthrow of the Government.

In the sight of these astounding facts, the President issues his proclamation appealing to the patriotism of the nation for the salvation of the Union, and Mr. Breckinridge grossly insults the intelligence of the country by charging that the President made war against the South! The facts adduced establish beyond controversy that the President *did not* make the war, as charged, but that the traitors made the war which now threatens the subversion of the Government and endangers our national existence.

Under this fearful exigency, I proceed to inquire, What are the duties imposed upon the President by the Constitution?

I maintain that the Government of the United States is a Government of limited powers; that the President of the United States can exert no power that is not granted in express terms or clearly implied as necessary to carry into effect the powers which are expressed. I should be the last person to defend any usurpation of power or unconstitu-

tional act of any one in authority, much less a President of the United States. The Constitution is written thus:

"Art. 2, Section 1. The executive power shall be vested in the President of the United States of America."

By another clause of the same section he is required to swear:

"I will faithfully execute the office of President of the United States and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

"Article 2. The President shall be Commander-in-Chief of the Army and Navy of the United States and of the militia of the several States when called into the actual service of the United States."

"Section 3. He shall take care that the laws be faithfully executed."

"Article 4. The Constitution and the laws of the United States made in pursuance thereof * * * is the supreme law of the land, * * * anything in the constitution or laws of any State to the contrary notwithstanding."

This supreme law is administered in our *duplex* system by various authorities, each in its appropriate department acting in harmony with the general whole.

"The executive power is vested in the President," and he is required "to take care" that each government, State and Federal, and the several authorities are maintained in their respective spheres.

In the event of the rebellion or insurrection assuming such proportions as to overthrow the "*republican form of government guaranteed to every State in the Union*," so that the officers can no longer execute the supreme law, the President is required by his oath of office to "preserve, protect, and defend" this supreme law. For this purpose the sword, by the Constitution, is placed in his hands. "He is the Commander-in-Chief of the Army and Navy and

of the militia of the several States when called into the service of the United States." He needs, therefore, no statute law to enable him, in the absence of Congress, to defend the assault on the nation's life, because his right rests on the supreme or universal law of self-defense, common to nations as individuals—that everything that has life, every being that has existence, has the right to resist and slay the assailant when an attack is made upon that life.

Our fathers presumed not to foresee all the dangers which in time might beset the Constitution, or to prescribe the mode of its defense, but in making the President its defender it was wisely left to him to resist the sword raised against the nation's heart by the sword. The express grant of the *war-conducting power* conferred upon the President carries with it the implied power to use every belligerent right known to the law of war.

Now an atrociously wicked war is waged against the Government and its formidable armies have overwhelmed every civil right from the Potomac to the Rio Grande, and threaten the annihilation of the Government and the nation itself. By virtue of the express and implied powers of the Constitution just indicated it is impossible to question the duty of the President to use every belligerent right, every instrument known to the law of war, to annoy, to weaken, to destroy the enemy, until its armies are overthrown and the civil authority is reëstablished. If there was no statute law, or no act of Congress authorizing an army and navy, and even if the act of 1795 did not apply to this exigency, still the act of the President in improvising an army for the defense of the Government was strictly in accordance with the principles of the Constitution, and if Congress had failed to perform its duties it was still the right and duty of every American citizen to rally under the flag in its defense.

It is a maxim at common law, "When a known felony is

about to be committed upon any one, not only the party assaulted may repel force by force, but his *servant attending him, or any other person present*, may interpose to prevent the mischief, and if *death* ensue, the party so interposing *will be justified.*"

Upon this principle of common law, which justifies a servant or bystander in slaying a felon who attempts the life of a friend, *a fortiori*, is a citizen of the United States justified who rises at the call of the President and slays the enemy endeavoring to kill, not one man only or a generation of men, but the nation itself?

According to Rutherford, "No action can be unlawful if it is not possible for a man to have done otherwise. Whatever is unavoidable is not unlawful. An act done from compulsion or necessity is not a crime, is not unlawful. To this proposition the law makes no exception." Mr. Breckinridge cites the authority of Webster and Douglas against the blockade of the Southern ports. Their opinions have no application whatever to a state of war. Blockade is a *belligerent* right, and can be exercised only by the President, as Commander-in-Chief, in time of war and against the enemy.

The following authority from the Father of his Country is of greater weight and much more applicable to the extraordinary exigence under which the President is placed. April 17, 1776, General Washington wrote to the Committee of Safety in New York:

"If in the prosecution of such measures as shall appear to me to have a manifest tendency to promote the interest of the great American cause, I *shall encounter the local convenience of individuals, or even a whole colony*, I beg it may be believed that I shall do it with reluctance and pain; but in the present important contest the least of two evils must be preferred. * * * We are to consider ourselves *either in a state of peace or war* with Great Britain. If the former,

why are our ports shut up, our trade destroyed, our property seized, our towns burnt, and our wealthy and valuable citizens led into captivity and suffering the most cruel hardships?

"It is indeed so glaring to permit intercourse with the enemy's ships-of-war that even the *enemy themselves must despise us for suffering it to be continued;* for besides their obtaining supplies of every kind, by which they are enabled to continue in your harbors, it also opens a regular channel of intelligence, by which they are from time to time made acquainted with the number and extent of our works, our strength, and all our movements, by which they are enabled to regulate their own plans, to our great disadvantage and injury. Relying on your zeal in the cause of American liberty, I ask your assistance in putting a stop to this evil—either to prevent any future correspondence with the enemy or in bringing to condign punishment such persons as may be hardy and wicked enough to carry it on otherwise than by a prescribed mode, if any can possibly require it."

Now, the Senator himself cannot deny that the enemy had repudiated the Constitution of the United States, organized a hostile government, seized all the Southern ports, filled them with privateers, and blockaded them against the commerce of the United States.

Under these circumstances, it became the manifest duty of the President to close these ports against the enemy as a constitutional war measure. Had the President not done so, he would have subjected our Government to the contempt of the civilized world, and, in the language of Washington, whose letter I have just cited, it would have been "so glaring to permit intercourse with the enemy's ships * * * that even the *enemy* itself must *despise* us for suffering it to be continued."

The Senator assumes that the power to suspend the writ of *habeas corpus* is vested only in Congress. He concedes that there is nothing in the language of the great Washington

which so restricts it; but, following Chief Justice Taney, he rests his argument simply on the fact that it is found classified under the grant of legislative powers.

But that argument has no value whatever, because there is in the tenth section, under the same article, an enumeration of powers *denied* to the States which Congress even cannot exercise.

Judge Taney, in using his mandate to liberate the man who had been imprisoned upon the charge of complicity with the enemy by General Butler, was as guilty as any private person who should have attempted to free him by force. The opinion of the Chief Justice adds nothing whatever to the argument. His extreme age and his known and cherished sympathies with the secession heresy (of which the Dred Scott decision furnished mournful evidence) prepared the public mind for that given in the present case.

The Senator asserts that "George Washington conducted the Revolution of the thirteen colonies without martial law." He may have stated this ignorantly, but every student of American history should have kuown that there was really nothing but martial law during that war.

Washington wrote to the secret committee of the convention of the State of New York July 13, 1776:

"I have mentioned the necessity of the body falling on some measure to remove from this city and environs persons of known disaffection and enmity to the American cause. The safety of the army, the success of every enterprise, and the security of all depend on adopting the most speedy and effectual steps for this purpose; * * * and I do most earnestly entreat you to adopt some plan for this purpose; * * * so as to remove those disquieting and discouraging apprehensions which pervade the whole army on this subject. * * * I foresee very dangerous consequences in many respects if a remedy for the evil is

not soon and efficaciously applied. The removal of Tory prisoners confined in this city is a matter to which I would solicit your attention. In every view it is dangerous and alarming. In case of attack or alarm there is doubt what part they would take and none can tell what influence they might have," etc.

This letter from Washington caused the thirteen Tory prisoners who had been most obnoxious for their principles and conduct to be removed, by order of the convention, to *the jail at Litchfield, Connecticut.* The crimes alleged against them were *disaffection to the rights and liberties of the American States; * * * corresponding with the enemy or engaging in treasonable conspiracies.* The *mayor* of the city of New York was among the number.

June 30, 1776, General Washington wrote to the committee of Essex county, New Jersey, in regard to Governor Franklin, of that colony, * * * "that he had evinced a most unfriendly disposition to our cause, and the colony convention having ordered him to Connecticut, * * * I am of opinion that your committee should interfere in the matter and give immediate orders to the officer of the guard to proceed with him in the execution of the duty wherewith he is charged. * * * If there is the *least danger of his rescue* or the guard appointed being remiss in their duty your committee should appoint a strong escort for the purpose, * * * and *conduct him securely to the place fixed for him.*" The New Jersey convention had declared Governor Franklin an enemy to his country, and the Continental Congress ordered him to be sent *under guard to Governor Trumbull, of Connecticut, with a request to treat him as other prisoners* if he refused to give his parole. Washington's letter settled the matter.

June 7, 1776, Washington referred to the case of Sir John Johnson in his communication to Congress. This

man Johnson was possessed of large wealth and lived about forty miles west of Albany, New York.

He had several hundred Highlanders as tenants, and these, with many Indians under him, he incited against the American cause. General Schuyler ascertained that Johnson had virtually broken his parole, and likely to produce much mischief; but he fled under an apprehended arrest. Sir John's papers were searched in his house, and *his wife was removed to Albany as a kind of hostage for the peaceful conduct of her husband.* Lady Johnson wrote to General Washington asking his interference for her release, but he *declined* to take the matter out of the authority of Schuyler and the Albany committee.

Dr. Benjamin Church, of Massachusetts, an active member of the Provincial Congress, was sent on a special mission to the Continental Congress, and was appointed by that body Surgeon General of the Army. He was recommended to Washington by the Massachusetts delegation as worthy of special confidence. He was detected October 1, 1775, in correspondence with a Mr. Fleming, in Boston, who adhered to the enemy. The discovery of his treason was somewhat remarkable. The letter was sent by a woman who was betrayed in her efforts to deliver it. The letter was shown to the Commander-in-Chief by General Greene. It was written in cypher. He was tried before the General Court of Massachusetts and expelled from the House; then by the Continental Congress, as laid before them by General Washington, and they decided that "Dr. Church should be confined *in jail in Connecticut, without the use of pen, ink, or paper, and that he should not be allowed to converse with any person, except in the hearing of a magistrate of the town or the sheriff of the county.*" He was accordingly imprisoned at Norwich.

The case of the arrest of the Pennsylvania *Friends* is another instance. Twenty of these persons were arrested

and imprisoned by the authorities of Pennsylvania, who refused to surrender these prisoners to the civil power or allow them a hearing. It was on the ground that these parties were believed to be in complicity with the enemy and against the American cause. Congress was in session at the time, in Philadelphia, and approved the suspension of the writ. These Pennsylvania prisoners were first sent to Staunton, Virginia, and afterwards to Winchester, where they were kept in partial confinement for eight months without any provision having been made for their support. The only allusion to this is a resolution passed the 8th of April, 1778, requiring the expenses of arrest, the journey from Pennsylvania to Virginia, and all incidental charges to be *paid by said prisoners*, two of whom had died in the meantime from privation and suffering.

I might cite instances where Tories were shot and hung and their property confiscated without the form of law during the American Revolution. In fact, martial law transcended all civil authority while our ancestors were struggling to establish our national existence.

Mr. Breckinridge was careful to refrain from referring to the authority of General Jackson. The suspension of the writ of *habeas corpus* in 1815 and the imprisonment of the judge, as well as the arrest and execution of Arbuthnot and Ambristher without trial, have received the unanimous sanction of the American people.

Mr. Jefferson, to whom the Senator refers as authority, said in his letter to J. B. Colvin, December, 1810, that—

"A strict observance of the written law is doubtless one of the highest duties of a good citizen, but it is not *the highest*. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law would be to lose the law itself, with life, liberty, property, and all those who are enjoying them with us, thus

absurdly sacrificing the end to the means. When in the battle of Germantown General Washington's army was annoyed from Chew's house he did not hesitate to plant his cannon against it, though the property of a private citizen. When he besieged Yorktown he levelled the suburbs, feeling that the laws of property must be postponed for the safety of the nation. While the army was before Yorktown the Governor of Virginia took horses, carriages, provisions, and even men, by force to enable the army to stay together till it could master the public enemy, and he was justified. In all these cases the unwritten law of necessity, of self-preservation, and of public safety control the written law of *meum and teum.*" If there had been no express grant in the Constitution to suspend the writ of *habeas corpus*, still the power to suspend all civil authority when necessary to maintain our national existence would have been complete. It stands upon "*the unwritten laws of necessity, of self-preservation, and of the public safety.*"

The Senator charges that the blood-bought rights of the people secured by the fourth article of the Constitution have been wantonly violated by the President. This has no foundation in fact. On the contrary, the enemy, which commands all the sympathies of the distinguished Senator, are themselves the violators of these sacred rights.

The fourth article of the Constitution, which secures the right of the people to their persons, houses, papers, and effects against searches or seizures without warrant of law, does not apply to the public enemy in time of war. This article does not conflict with or control the constitutional principles which have been adduced, but strictly harmonizes with them. Should a spy be found within the American camp or the chances of war throw Davis or Beauregard in the hands of our army, no one would think their arrest and imprisonment unconstitutional or doubt

the duty of the commander to disregard any writ of *habeas corpus* issued for their liberation. Should a commander capture a cargo of provisions or a wagon-load of Enfield rifles *in transitu* to the enemy, no one could pretend to believe that he had violated this article of the Constitution!

The Senator complains that this article of the Constitution has been infracted in Maryland and Missouri by the arrest of private persons and the seizure of private property. He assumes that the parties in Baltimore were innocent. They may have been so, but yet their arrest and imprisonment was justifiable under the maxin of the common law, "if the circumstances were such as to furnish reasonable ground for apprehending a design to commit felony, etc., and there is also a reasonable ground for believing the danger imminent that such design will be accomplished, although it may afterwards turn out that the appearances were false and there was in fact no such design nor any danger that it would be accomplished."

The letter of Mr. Jefferson, already quoted, referring to the conspiracy of Burr, says of General Wilkinson:

"In judging this case we are bound to consider the state of the information, correct and incorrect, which he then possessed. He expected Burr had a band from above, a British fleet from below, and he knew there was a formidable conspiracy within the city. Under these circumstances was he justifiable, first, in seizing notorious conspirators? On this there can be but two opinions—one of *the guilty and their accomplices;* the other that of all *honest men.* Second, in sending them to the seat of government when the written law gave them a right to a trial in the territory? The danger of their rescue, of their continuing their machinations, the tardiness and weakness of the law, apathy of the judges, active patronage of the whole tribe of lawyers, unknown disposition of the juries, an hourly expectation of the enemy, *salvation of the city* and of the

Union itself, which would have been convulsed to its center had the conspiracy succeeded. All these constituted a law of necessity and self-preservation, and rendered the *salus populi* supreme over the written law. The officer who is called to act on this superior ground does indeed risk himself on the justice of the *controlling powers of the Constitution*, and his station makes it his duty to incur that risk; but those controlling powers and his fellow-citizens generally are bound to judge according to the circumstances under which he acted. They are not to transfer the information of this place or moment to the time and place of his action, but to put themselves in his situation. We know now that there never was danger of a British fleet from below, and that Burr's band was crushed before it reached Mississippi; but General Wilkinson's information was very different and *he could act on no other*."

Our military commanders in Maryland and Missouri are fully justified upon the precise principle upon which Mr. Jefferson exonerated General Wilkinson.

Finally, Mr. Breckinridge charges that the Constitution was violated by the suppression of a St. Louis press! This is a grave charge. The freedom of speech and the press are especially guarded by constitutional provisions. I hold the right as inalienable to citizen and Christian. It has a priceless value to our civil liberty, and as an independent member of the press I will never consent to see its power trammeled or its freedom abridged by President or ruler.

It is unquestionably true that the press seized in St. Louis was in the service of the Southern rebellion and engaged in the destruction of *these very rights* and of the entire Constitution and Government. Upon the principles of the Constitution which I have heretofore cited in this article it necessarily follows that any one who is aiding the rebellion by treasonable utterances, whether spoken or

written, is as amenable to martial law as though enrolled in the Confederate army, and by the same authority it is as much the duty of the Commander-in-Chief to arrest and hold subject to martial law any one found aiding the rebellion by treasonable utterances, spoken or written, as it is his duty to arrest any one found sending to the enemy's camp intelligence, provisions, or arms. In the progress of events the rebellion may assume such formidable proportions as to override both the judicial and legislative powers, leaving the military as the only visible power in the land. It would then be the clear duty of the President, as Commander-in-Chief, to maintain the military authority over every foot of territory of the United States until the judicial and legislative power could be restored. In such an exigency it may be his duty to call several millions of men into the service. It may be necessary to arrest traitorous Senators and members of Congress, judges of courts, etc., who are in complicity with the rebellion, and treat them as public enemies. Instead of suppressing one press, extend it to all presses engaged in exciting and stimulating the treason. Instead of arresting a few traitors he may arrest all traitors and deprive them of the means of warring on the Government.

This Government relies on individual duty and obligation. It has the power to tax *individuals* in any mode and to any extent to maintain it, and to call out citizens as individuals for military service to defend it.

In this supreme struggle for its existence men of all sections adhere to it. They should not only sustain it, but, if necessary meet death to preserve it, until the roar of the final fire and the judgment of the quick and dead.

Better that Washington had perished like Hampden; that Jefferson had never drafted the Declaration of Independence; that Lee, Hancock, Adams, Franklin, Sherman, Livingston, etc., had died like Sydney and Russell upon

the block, than that this Union, created to be the *daylight* to break the night of ages, should finally collapse, and *traitors* be permitted to write the epitaph "It lived and died."

ANNA ELLA CARROLL.

MARYLAND, *August* 8, 1861.

In the first volume of the biography will be found some of the numerous letters testifying to the great influence on the border States of this able and timely reply.

Edward Bates, Attorney General of Lincoln's cabinet, writes her that he is requested by President Lincoln to thank her most cordially for her able support.

Governor Hicks, of Maryland, writes for a supply and tells the Union Committee of Baltimore that if they expect to carry the election they must go to work and send Miss Carroll's documents over the entire State. Mr. Mayer and Mr. Fickey, of the committee, make application for all that she can spare. The committee sends them broadcast over the entire State, and writes that to their surprise and the relief of their treasury Miss Carroll makes no charge.

Mr. James Tilghman writes her from Baltimore that he placed his son at the door of his house on Camden street, with paper and pencil, and five hundred men called for the pamphlet in one day, and that these are the bone and sinew of the city, wanting to know which army they ought to enter, and he begs her to send more—all she can—as they go like hot cakes.

Miss Carroll's own private means are supplied for the publication. The War Department takes up the pamphlet and circulates a large edition with admirable effect, and

the Department then requests Miss Carroll to continue to write in support of the administration, and suggests the War Powers of the Government as her next subject.

Miss Carroll's, pamphlets together with the great influence that she exercised over Governor Hicks, of Maryland, to hold him to the Union cause, were largely instrumental in keeping Maryland within the Union and thus ensuring the safety of the National Capital.

CHAPTER II.

[Note by Miss Carroll in the spring of 1891, to accompany the republication of "The War Powers of the Government."]

Having made an agreement with Honorable Thomas A. Scott, Assistant Secretary of War, to write in aid of the Union, it was determined that I should produce a document on "The War Powers of the Government," as none had then been written and such a pamphlet was essentially demanded by the exigency of the crisis. While in St. Louis, in the autumn of 1861, I gave every spare moment to the preparation of this work and visited the Mercantile library in that city almost daily in quest of books bearing on the subject.

Mr. Johnston, brother of Albert Sydney Johnston in supreme command of the Confederate forces west, was the librarian. Soon a controversy between him and myself arose and was most earnestly continued. He ridiculed the idea of the Northern army being successful and said the matter was even then accomplished, and before spring the South would have her independence assured and Price's army would have the whole of Missouri.

I derived much information from him. As the brother of Albert Sydney Johnston, he was fully acquainted with the Confederate prospects in that section. He said he was astonished to meet one of my family on the wrong side, as he had long lived in my section of the country. This

quickened my activity to finish my book and do all I could to serve the Union cause.

I hastened to Washington city, wrote the following document, which was fully approved at the War Department and by President Lincoln, and as soon as published sent it to the Capitol, where it was generally read, early in December, 1861.

A. E. CARROLL.

UNITED STATES CIVIL WAR.

PAMPHLETS.

II.

1862.

[SEAL OF DEPARTMENT OF STATE.]

THE WAR POWERS

OF

THE GENERAL GOVERNMENT.

WHO MADE THE WAR—THE STATUS OF THE CITIZENS OF THE SECEDED STATES DEFINED—CONGRESS HAS NO POWER TO CONFISCATE SLAVES OR OTHER PRIVATE PROPERTY—THE OPINIONS OF JOHN QUINCY ADAMS AND CHARLES SUMNER REFUTED—THE RIGHT TO CAPTURE ALL PROPERTY USED FOR INSURRECTIONARY PURPOSES—THE RIGHT TO SUSPEND THE WRIT OF HABEAS CORPUS AND ARREST THE ENEMY IN EVERY PART OF THE NATIONAL TERRITORY—THE DUTY OF ALLEGIANCE AND PROTECTION.

By ANNA ELLA CARROLL, of Maryland.

WASHINGTON:
PRINTED BY HENRY POLKINHORN.
1861 (1862).

THE WAR POWERS OF THE GENERAL GOVERNMENT.

The purpose of the following pages is to offer some consideration in respect to the powers and duties of the General Government in its endeavors to suppress the present insurrection, but to treat this subject intelligently it is requisite to recur briefly to the peculiar origin and characteristics of the insurrectionary movement, and the first remark to be made is that this rebellion differs from most others in the singular fact that it did not proceed so much from the people of the States which nominally seceded as from the governments of those States.

At the outset it was, for the most part, a conspiracy of official persons, and to render the enormity greater these very traitors, using the Democratic party as a means, had sought and obtained office only for the purpose of employing the power it gave them to strike down the government of the nation. This was the condition of things throughout the Southern States. The conspirators held every position of public influence—executive, legislative, and judicial—while as cabinet ministers or members of Congress they controlled the administration at Washington.

At length, when the opportunty, so ardently longed for, arrived, they raised the standard of revolt, and then the loyal men of the South found themselves wholly without the means of effectual opposition to a treason which held in its hands every State authority, and seemed at the same time to have even the countenance of the General Government. What could these patriots do?

The adversaries of the nation bore the ensign of State sovereignty, and thus appeared to be clothed with all the

colors of political legitimacy, while they possessed, in fact, the most energetic agencies of power—the purse, the sword, and the public press.

In addition to all this, the General Government, with apparent unconcern, beheld its banner trailing in the dust, yet moved not, either to avert the fact or avenge the indignity. Can it then be a matter of surprise that fidelity itself should falter, thus left without its natural protection and in the presence of a power for the time irresistible?

To hasty thinkers it may, indeed, seem strange that a sufficient number of the Southern people could be induced to acquiesce in the rebellion so as to give it the appearance of a popularity to which it could lay no just claim; and this political enigma can only be explained by a proper appreciation of the different theories which have prevailed most widely in regard to the nature of the complex Federal system under which we live, and more especially by an accurate estimate of that peculiar theory which has always been a favorite with the South.

As is well known, at the time of framing the Constitution American statesmen were divided into two great schools of opinion in relation to the character of the government which they were about to organize.

One school, aware of the necessity of strength, as well to prevent anarchy as to preserve independence, was led to advocate such a powerful national government as could make itself felt at home and feared abroad.

The other school, knowing the inherent tendency of all power to usurpation, proposed to strengthen the States as a counterpoise to the authority of the General Government.

But as it was impossible for two schools entertaining such opposite views to agree, and yet, since both felt the necessity to be absolute for some new system, the result was a compromise, and that compromise was the present Constitution.

The great difficulty experienced by its authors was to trace the dividing line between the powers to be granted to the National Government and those to be reserved to the States and the people. They succeeded, nevertheless, in the accomplishment of the perplexing task in a manner which must excite the admiration of all posterity. But there was one case for which they did not provide which might seem to be more important than any other. They prescribed clearly enough the bounds of Federal and State authority, but they omitted to appoint any judge of boundaries. They constituted no umpire to determine questions arising from a conflict of jurisdictions; and yet this was no oversight. They constituted no judge between the General and State governments, because the exercise of any judicial functions in the case proved an impossibility. If the General Government were the exclusive judge as to the line between its own powers and those of the States, it might push that line to any extent whatever. It would thus have the ability to absorb at pleasure the entire jurisdiction reserved to the States. On the other hand, if the States were made the exclusive judges of the case they could usurp in like manner all the powers of the General Government, for whoever is judge in his own case will never fail to judge in his own favor, being sure to take for himself whatever is in controversy.

Again, to have provided some third power as arbiter in cases where the Federal Government and the States could not agree would have rendered such power the common sovereign over both, so as to enable it to usurp every other authority.

Hence our fathers designated no common judge between the States and the Nation, because the very idea of such a judge implies a contradiction. They therefore merely provided in the Federal compact for the division and distribution of the sovereign powers between the General

Government and the States, trusting to the wisdom and prudence of each to remain content with its own share.

It has sometimes been made a question as to what is the nature of this Federal compact and who are the parties to it, but a very simple rule would seem to furnish a clear and decisive answer. It is a principle alike of national law and common sense that all are parties to a contract who are intended to be bound by it and assent to its terms. Hence by this rule the Constitution is a compact to which all the States and all the people, as well as the General Government, are parties, because all these are mentioned in it and all assented to it at the same time or in succession.

But far different from this clear and precise view of the Federal compact have been the opinions of most politicians, and they have differed not less widely among themselves, for as soon as the new government was fairly in operation the two schools revived their old war, transferring the field of battle to the question of construction.

The advocates of strong government asserted the Constitution to be a compact between all the people of the United States in the mass, and therefore inferred it to be indissoluble unless by their consent.

On the other hand, those who dreaded the power of the National Government as being dangerous to the liberties of the States assumed that the latter were in their corporate capacity the real parties to the Federal compact, and hence argued that any State might treat such compact as null whenever broken either by the other States or by the General Government, and for this doctrine as to the power of any party to avoid a social compact in the case of a breach of its terms by the other side the school of State rights could always adduce the powerful support of the great writers upon natural law.

Rutherforth expresses it in his own inimitable style as follows:

"In these States, where the Constitution has divided the supreme power between the King and people, Grotius allows that the people have a right to resist the king by force when he invades their part of the power.

"Now that part of the sovereign power which the monarch has was granted to him at first by the compact which settled the Constitution and is holden by him afterwards by the same compact. As long, therefore, as the obligation of the compact continues he has a right to his part of the supreme power, and the people have no right to take it from him, either by war or by any other means, without his consent; but by willfully and notoriously invading the other part he breaks the constitutional compact.

"And this compact is so far like all other compacts that a violation of it on his side will leave the people at liberty to choose whether they will abide by it or not.

"A compact which is violated by one of the parties may be made void at the discretion of the other party.

"However, it is sufficient for our present purpose that when the compact by which the people gave their civil government a part of the supreme power is broken on his side, the obligation of it is voidable or may be set aside at the discretion of the people."

It follows from the point of view presented by Rutherforth, that in case of the alleged breach of the Federal compact or in any question of jurisdictional power arising between a State and a General Government, each must have the independent right to determine the matter for itself, because the Constitution has appointed no umpire between them, and it is plain that if those who have no common judge will persistently assert their claim to the same thing the force of the strongest must necessarily take it. Hence the feeble, when associated with the strong, would seem to have no other resource left in a case of final difference than to withdraw from the unequal association, and the right to

withdraw would also seem as clear in a case where the other party might employ the prerogative of mere strength to put aside any material article in the agreement by which the association was originally constituted. Hence by this apparently fair mode of reasoning a State would have the privilege of secession in a case where the National Government should invade its reserved powers and thus violate the compact upon which the Union is alone founded.

Now, it was this theory of the Federal system which always predominated in the Southern States, and naturally so, too, because it was the doctrine most favorable to the weaker section of the Union, and weakness, by the law of interest, as well as that of reason, never fails to look with affection upon any means which may be employed to give it equality in a contest with power. Hence this theory was taught and accepted in one form or another almost universally for years in all the States where the rebellion is now in the ascendant.

The demagogues used it as the most reliable instrument to raise themselves to official place, and at length the conspirators seized upon it as the only possible lever which could move their States out of the Union. Other circumstances, however, contributed to the same end. The ever-increasing numerical majority of the North excited uneasy apprehensions in the Southern mind, and, instead of laboring to tranquilize such fears, many Northern politicians were incessantly making utterances which necessarily tended to agitate them still more. At last all these causes operating jointly resulted in the great insurrection.

But it is useless to consume more time in tracing the action of causes. The period for controversy has passed, and that for penning impartial history has not yet come. In the meanwhile, the urgent realities of the present demand undivided attention and action as prompt as it should be powerful.

What, then, are the rights and duties of the General Government in its treatment of the insurrection?

This is the momentous question of the day, and the dreadful crisis seems to call for a more careful answer than it has yet received; for it must now be apparent to all that this is no petty strife, but one of those great contests of arms which make eras in the war-cycle of history.

There are now seen standing face to face more than a million of men, armed for murderous combat, and, as it were, pausing for the sound of the trumpet to signal them to mutual death! Yet to these is committed the question of civilization on the continent.

It therefore behooves us first of all to inquire, What is the object of this mighty war? because it is the object alone which can justify the horrors of any war to a correct national conscience or before the Judge of the Universe. Now, on the side of the old flag, the instinctive answer of every lover of its stars is that "we are fighting to preserve the Constitution and restore the Union."

Let us, then, accept this answer as the first and most general criterion of the power to carry on the war, because it is self-evident that the powers employed must never be subversive of the very purpose which they are only intended to accomplish. Therefore, since the Government is using all the sinews of the public force to restore the authority of the Constitution over others, it is obliged by every principle of justice and prudence to keep that Constitution inviolable on its own part. It cannot act, without becoming a thing of shame among the nations of the earth, upon the insidious maxim that the end justifies the means. It cannot adopt the flagitious doctrines of a Jacobinic delusion and break the Constitution in order to save it. Hence the special and avowed object of the war imposes upon its conduct this one general rule—that it can be carried on alone under the direction of constitutional powers.

Now, the first question of power which naturally suggests itself to every mind is: By what authority granted in the Constitution does the Government assume to wage such a war as this at all?

By what color of authority does it muster and march such powerful armies across the borders of the States, there to encounter other hosts equally powerful and assuming to battle by the authority of those States?

By what sanction of authority does it strew the fields of Virginia with slain and wounded, taking thousands of prisoners, and exercising, and according to the adverse force, all the usual rights of a belligerent in a great war?

The spectacle is as painful as it is unparalleled, and the inquiry cannot but be relevant, where is the warrant in the Federal compact for this?

And yet we need not go far to find an answer. The scenes of the dread array themselves present the answer. They proclaim it to be a case of war. And yonder flies a flag that gives another answer, and yet the same. It is not the old flag of the nation; it has neither the stripes nor the stars which were wont to float in triumph over the old fields of our glory. That flag says *it is a foreign war;* and the fact is true as far as the strength of rebel prowess can make it so. Is not this, then, an answer to the question of power? Here is war; here are colors hostile to the nation.

And has not every government power to wage battle against a force bearing such a banner on its own territory? The case is plain. The Federal Government is moving its soldiery under the warrant of the war power; but no one will pretend to deny the power of the National Government to engage in a war. The right to make war is the self-defense of nations, and the Constitution expressly grants, as well as implicitly recognizes, this power. By one clause it confers on Congress the right "to declare war;" and it

is manifest that no declaration is needed when the war has been commenced against the Government by others.

There are, however, two cases of war: that of war with a foreign power, and that against an insurrection or rebellion; and the Constitution, in the clearest manner, makes provision for the latter case. It gives to Congress the authority "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasion." Here foreign war and internal war are both mentioned. By another clause power is granted "to suspend the privilege of the writ of *habeas corpus* when in cases of rebellion or invasion the public safety may require it."

Here the power to suppress rebellion is necessarily conferred in terms. By another clause the President is made "Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States."

In this connection it should be especially remarked that these clauses of the Constitution place the two cases of war—the one being internal and the other external—in the same predicament as to power. Thus Congress is to call forth the militia "to suppress insurrections and repel invasions;" thus the writ of *habeas corpus* is to be suspended only "in cases of rebellion or invasion," and thus the President only becomes "Commander-in-Chief of the militia of the several States when called into the actual service of the United States."

But the actual service of militia means war alone. Hence as Congress can only call forth the militia to suppress insurrections and repel invasions, and the President can only command the militia when so called forth, it is plain that the two cases of insurrection and invasion are both located by the Constitution in the common category of war, and the classification is perfectly accurate in a scientific point of view, because insurrection and invasion

are both alike cases of resistance to the sovereignty of the nation—the one being the resistance of an internal force, the other that of a foreign and independent power, while each in precisely the same manner tends to impede the execution of the laws and to assail the supremacy of the government.

Hence, if it be possible for the powers of war to be vested by human language, they have been granted to the Government by the Constitution. That instrument makes provision for war in the only three cases where it can be imagined to arise—the war by "declaration," when the Government may choose to assail the territories of a foreign power; the war from "invasion," when a foreign power assails our own territories, and the war of "rebellion," when subjects of the nation organize a force in opposition to its authority.

Secessionists, however, urge that the Government cannot march its armies into the territory of a State against its expressed will. The objection is futile, for how could the Government otherwise either repel an invasion or suppress an insurrection?

The universal rule of law and reason is, that when a power is granted all the means are granted at the same time which may be necessary to render such power effectual. Nor can the action of the Government be regarded in any sense as war against a State, according to the meaning of the term "State" in the Constitution, which signifies only one of the local political bodies having a prescribed place in the Federal system—that is to say, one of the "United States."

But these new insurrectionary powers do not even pretend to have such a character; they deny it in arms; they resist the imputation unto death; they proclaim to all the world that they are no longer members of the "United States." Hence these cannot be considered "States," but only rebellious powers which have displaced at once the

authority of the States and that of the General Government. They are not so much evil stars that have wandered from their orbits as comets of revolution which have dashed away for a time the true stars of the system from their spheres.

Hence this is a civil war, and therefore the Government may employ all the constitutional powers at its command for the subjugation of the insurrectionary forces in the field; but while it is enabled to employ all the powers, it is obliged to observe at the same time all the established usages of war, for the same enlightened maxims of prudence and humanity are as obviously applicable to a civil war as to any other.

According to Vattel, "when a party is formed in a state who no longer obey the sovereign and are possessed of sufficient strength to oppose him, or when, in a republic, the nation is divided into two opposite factions and both sides take up arms, this is called 'civil war.'"

"Custom appropriates the term *civil war* to every war between the members of one and the same political society. If it be between a part of the citizens on the one side and the sovereign with those who continue in obedience to him on the other, provided the malcontents have any reason for taking up arms, nothing further is required to entitle such disturbance to the name of 'civil war,' and not that of rebellion.

"This latter term is applied to such an insurrection against lawful authority as is void of all appearance of justice.

"The sovereign, indeed, never fails to bestow the appellation of rebels on all such of his subjects as openly resist him, but when the latter have acquired sufficient strength to give him effectual opposition and to oblige him to carry on the war against them according to established rule, he must necessarily submit to the use of the term *civil war*.

"A civil war breaks the bonds of society and government, or at least suspends their force and effect. It produces in the nation two independent parties, who consider each other as enemies and acknowledge no common judge. These two parties, therefore, must necessarily be considered as thenceforward constituting, at least for a time, two separate bodies, two distinct societies. Though one of the parties may have been to blame in breaking the unity of the state and resisting the lawful authority, they are not the less divided in fact. Beside, who shall judge them? Who shall pronounce on which side the right or wrong lies? On earth they have no common superior. They stand, therefore, in precisely the same predicament as two nations who engage in a contest, and, being unable to come to an agreement, have recourse to arms.

"This being the case, it is very evident that the common laws of war—those maxims of humanity, moderation and honor—ought to be observed by both parties in every civil war.

"Whenever, therefore, a numerous body of men think they have a right to resist the sovereign and feel themselves in a condition to appeal to the sword, the war ought to be carried on by the contending parties in the same manner as by two different nations, and they ought to leave open the same means for preventing its being carried to outrageous extremes and for the restoration of peace."

Hence we perceive that the general power of the Government to direct the operations of the war is subjected to the necessary limitation that it shall be conducted in accordance with the public law of all civilized warfare.

There is, however, one essential difference between the case of civil strife and that of foreign war, which imposes a further qualification on the power of the Government.

One of the peculiar characteristics of foreign war is that it not only places the opposing sovereignties in a state of

neutral hostility, but also at the same time it imprints the condition of belligerents upon all their subjects individually without their acquiescence or even against their will.

In reference to a case of conflict with any foreign power, a nation cannot be at war and a single one of its citizens at peace, or, in the words of Chancellor Kent:

"When war is duly declared it is not merely a war between this and the adverse government in their political character. Every man is, in judgment of law, a party to the acts of his own government, and a war between the governments of two nations is a war between all the individuals of the one and all the individuals of which the other nation is composed."

But the rule in cases of civil war is different, and for obvious reasons, because no man should be implicated in the guilt of insurrection unless he actually rebels.

No man becomes a part of the insurrectionary force unless he actually joins it. One cannot be considered criminal unless in both fact and intention he has committed a crime.

No citizen is held responsible on account of the locality of his domicile, and none can be hung for treason by mere fiction of law.

Hence the rule of reciprocal hostility between all the subjects of two sovereigns at war can find no sort of application in the case of a civil war.

In the case of a rebellion no one is an enemy to the government unless he *voluntarily* casts off its authority; nor can the people of the Southern States be regarded as criminal, whether legally or morally, merely from the fact of their temporary submission to an irresistible force. The people of any city or district are always justified in doing so, alike in cases of invasion and rebellion. By the laws of God and man, the *vis major, irresistible force*, excuses everything.

It follows clearly, therefore, that in carrying on the

present war its operations can only be aimed against the insurrectionary force which resists the authority of the Government, because this is the only public enemy, and not the people of any State or district.

Another question may be proposed as to what is the precise nature of the power to be employed in overcoming the resistance to rebellion. Is the instrument to be used the civil force or the military force of the nation? If it be the former, it will be put in motion as subsidiary to judicial process; but if the latter, it must necessarily be moved by the President, as Commander-in-Chief of the Army.

This question, however, may be considered as having been virtually answered already, for when a given case is pronounced to be one of war it necessarily results that it cannot possibly be dealt with by any other than the military force; for, as defined by Demosthenes, "war is made against those who cannot be restrained in a judicial view;" and Grotius, citing the passage, adds: "Judicial proceedings are of force against those who are sensible of their inability to oppose them; but against those who make or think themselves of equal strength wars are undertaken." Hence the war power springs into sudden activity the moment when the functions of the judicial power are rendered impracticable.

The general power of directing all the movements of any war is vested in the President of the United States, under the constitutional clause which makes him "Commander-in-Chief of the Army and Navy and of the militia of the several States when called into actual service." Hence the President, by virtue of this chief command, must necessarily direct every operation intended to overcome the resistance of an adverse force, whether it may be that of rebellion or invasion. He is thus invested by the Constitution with the exclusive authority to wield the whole military power of the United States in its three great divis-

ions—the army, the navy, and the militia of the several States when called into actual service. He is the sole power of the Government, having the competency to give any order in the application of martial law.

It is true that Congress alone has the power "to declare war;" but, as we have seen, war may come without declaration on our part by the hostile action of others, namely, by "invasion" or by "insurrection." To Congress also is delegated the power "to provide for calling forth the militia to suppress insurrections and repel invasions;" but although Congress may provide for calling forth the militia, Congress cannot command them when in actual service. Congress may declare war, yet cannot direct such operations of the army and navy as can alone render the war itself effectual.

The Constitution has appointed the President to the chief command, and there is no authority in our system to displace him; nor does the President thereby become a part of the military force, though he obtains, by virtue of his office, the exclusive title to control it, and hence when a case of war occurs, whether from invasion or insurrection, it is then his right and duty to interpose all the military power of the nation for the purpose of overcoming the hostile force in arms against its authority. It is the fact of war which calls this constitutional right into action, and not any vagrant power supposed to come forth from chaos at the invocation of the plea of necessity—a plea which justifies nothing because it justifies everything.

It surely cannot be pretended that the constitutional clause imposing upon the President the duty "to take care that the laws be faithfully executed" would authorize him to interpose in every case where the laws may be broken or even resisted, and thus to supersede the ordinary functions of the judiciary by those of a tyrant's discretion. Such a power would enable him to displace judicial action in every

instance where its exercise is possible—not merely in a state of war, but in time of peace.

But the question of the greatest difficulty is not that which relates to the mere existence of the power of war to subjugate the forces of the rebellion, but that which concerns the incidents and extent of the power.

Some wild theorists even allege that the power to wage this civil war against the insurrection carries with it the transcendent power of general confiscation over all the property situated in the States where the insurrection rages, as well as to strike down whatever State institution the Government may deem even indirectly opposed to the success of its arms.

Now, we have already shown that the war must be waged to restore the Constitution, and hence the war power itself must not trample that instrument in the dust; but the adoption of any such policy as that recommended would be as flagrant an invasion of the rights reserved to the States and to the people as it would be an outrage against the usages of modern warfare.

The Constitution expressly forbids the taking of "private property for public use without just compensation."

The terms of the clause imply two restrictions: *First*, that whenever private property is taken by the Government the act must be accompanied with "compensation;" and, *secondly*, that such property can only be taken for "public use," and consequently not for "private use," or for any other whatsoever.

Therefore, without annulling that clause of the Constitution, it is clearly impossible to confiscate the property of even the rebels themselves, unless when it is in actual use as an instrument of war; but in the latter predicament the property is no longer private in the constitutional sense. It has passed into the species of public property belonging

to an enemy, and thus become liable to capture under the laws of war.

The proposed general emancipation of slaves is repugnant to the second probibition implied in the clause quoted, as well as to the first, because the proposition here is not to take the slaves and convert them to "public use" at all, but to liberate them from subjection as property.

I know it has been contended by a statesman of great name that war gives to the military commander the power to abolish slavery whenever the powers of war entitle him to set aside the civil authority, and he adduces two examples of the exercise of such a power in the war of the Colombian revolution—one by the Spanish general, Murillo, and the other by the revolutionary general, Bolivar.

It is surprising that a mind so acute did not perceive the utter impertinence of the precedents cited in their application to the case of the Southern people. In the first instance, the Spanish general was bound by no constitution, since Spain acknowledged none—at least in regard to the American colonies. In the second instance, Bolivar, heading an independent force, did not for the time recognize any other powers than those of the sword, and did not pretend to employ any other. While both examples are from the half barbarous and bloody annals of a cruel race, infamous in every age for its violations of the laws of war, it is true a Senator, also of high reputation, by a more thorough research of universal history, has recently been able to discover another precedent evincing the competence of war to break the chains of the slave; but he had to accept this third example from the horrors of the most frightful civil war that ever desolated the earth and at the hands of its greatest monster, the insatiably revengeful Marius.

However, a bare statement of the argument propounded by Mr. Adams is enough to demonstrate its fallacy. It is concisely this: Since military power, within the sphere of

its operations, takes the place of all civil authority, it thereby necessarily acquires the right to decree the general emancipation of slaves. Now, the sophistry of this logic consists in its tacitly assuming that the military power not only suspends the local civil authorities, but also, at the same time, the general and supreme authority of the Constitution. But will any one say that this is so? Can war be waged at all, especially in the Territories of the Union, but under the warrant of the Constitution? And can any one who acts by the authority of the Constitution pretend to have the privilege of breaking it? Is not, then, the assertion that any power known to our system, whether civil or military, State or Federal, can supersede the Constitution in any particular a revolutionary doctrine as rebellious in character as secession itself? There is a single constitutional right which may be suspended for a time, and that is the "privilege of the writ of *habeas corpus*." But such suspension, being provided for by the Constitution, is itself constitutional, and therefore not repugnant to it. This subject, however, will be considered more fully in the sequel.

If the confiscation of private property suggested would thus be a clear infraction of the Federal compact, it would be not less an enormity against the practice of civilized nations.

"The general usage of war is," says Chancellor Kent, "not to touch private property upon land without making compensation, unless in special cases dictated by the necessary operations of war, or when captured in places carried by storm, and which have repelled all the overtures of a capitulation;" and, according to Vattel, "for the same reasons which render the observance of those maxims a matter of obligation between state and state, it becomes equally and even more necessary in the unhappy circum-

stance of two incensed parties lacerating their common country."

Nevertheless I am sensible that to every argument of reason and consideration of justice and humanity the same objection of political delusion will be urged, that the Southern people have forfeited all their rights under the Constitution by their treason against it.

This objection, however, has been fully answered, since it has been clearly shown that no one can be arraigned for the crime of treason who has not voluntarily participated in rebellion against the Government; and it is perfectly apparent that since the war is intended not to destroy the Constitution but to preserve it, the Government can gain no new powers by putting down the rebellion other than those it possessed before.

"The act of the people," says Rutherforth, "however injurious it may be, will not increase the power of the sovereign or will not give him a right to any more power than the Constitution has given him.

"For the sovereign power was originally vested in the collective body of the society, *called the people.* The sovereign cannot of right claim any greater part of it than the people have granted to him by compact in forming the Constitution.

"When the people violated the compact on their side it is voidable at the sovereign's discretion.

"If he choses to abide by it he has no right to any other power than he derives from it, and if he choses to make it void instead of gaining a greater part of the supreme power he will lose what he has and it will, as in the other case, revert to the people.

"Thus the people may claim to change the Constitution when the sovereign invades their part of the power, whereas *he can only claim to continue the Constitution* though

the people should carelessly and wrongfully invade his part.

"This is the whole of his right, and no event whatsoever can give him a more extensive right without the consent of the people.

"If the struggle between him and them should end in civil war and victory should declare itself on his side, yet conquest will not of right increase his power, however strongly we may put the case in his favor by supposing the breach of the Constitution to have begun from the people and the whole blame of the war rests upon them.

"For the use of force, though it should be superior to the force opposed to it, only serves to support a right which might otherwise have been hindered from taking effect; it does not produce a right where there was none before."

The proposed general confiscation of Southern property is as repugnant to the rules of expediency as it is to that of constitutional power. It is simply a proposal to convert every Southern man into an enemy and to perpetuate the hostility through all future generations. It is a proposal to make the Southern States forever what Ireland is to England, what Italy has been to Austria, what Poland has been to Russia.

It is a proposal to treat all Southern territory as a conquered province, in order to rule it at the expense of a standing army of half a million of bayonets. Such a policy can never hope to restore the Union, while it would be sheer suicide to the Constitution. Such a policy might create unity, which is a very different thing from union, but it would be the unity of a frightful despotism over both the South and the North.

Besides, this extreme policy would insure the defeat of the very object which its advocates have chiefly in their view, namely, the emancipation of the slave. Its immediate effect would be to array the whole South as one man in the most

deadly hostility to the Government, and thus render all hopes of reconciliation utterly impossible for all time to come. Disunion would then be a fact already accomplished; but this would leave the Confederate States forever free from all restraint, whether physical or moral, to pursue their favorite schemes for the extension and perpetuation of slavery, while the gates of the ocean would be thrown open for fresh importations from Africa; a military despotism of great strength would be so firmly seated in the South as to prevent all attempts of servile insurrection. It is thus that the only hope of emancipation for the slave is connected with the preservation of the Union, and with that silent progress of intelligence and virtue which the Union alone can guarantee.

A distinction must be taken between the powers which the Government may wield so long as the insurrectionary force is capable of affording it effectual resistance and those which are to be employed so soon as that force shall be subjugated. While the war continues the President must conduct it by the instrumentality of the military force, but when the war ceases, upon having accomplished its end, then *ipso facto* the functions of the war power cease and those of the judiciary are replaced in complete authority.

Because, although the President has the lawful power to conquer any organized force which resists the exercise of Federal jurisdiction in any part of the national territory, yet he has no power or pretense of authority to punish any offenses other than those against the laws of war. The President cannot punish treason any more than he can punish ordinary homicide or larceny. He can only conquer traitors and then turn them over to the courts.

The principle just announced stands upon that article of the Constitution which prescribes that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, ex-

cept in cases arising in the land or naval forces or in the militia when in actual service in the time of war or public danger."

Here the power to punish is unquestionably denied to any other authority than the judiciary except in the case of strictly military persons, and the prohibition extends in terms to "time of war or public danger." Therefore it matters not how fearful may be the war or how pressing the necessity of the public danger, though every institution in land should tremble on the verge of national ruin, still no non-military person can be capitally punished or punished for any infamous crime but by a judicial sentence.

However, it does not follow that a military tribunal cannot punish spies and others offending against the known rules of war, because spies, by assuming the fictitious character of friends and by pretending to act in aid of the military force, subject themselves voluntarily to the laws governing such force, and by their own conduct are thus estopped from disputing a fact which they have thus solemnly asserted for so base a purpose.

It follows also that the President has no power to punish even the insurgents taken in battle; they may be slain if they will not submit. In the same manner the marshal may slay one who resists to the death the execution of civil process; but should the agent of military power go beyond this and assume to punish capitally the prisoners who have surrendered themselves the act is in a civil sense murder, and in a military one a monstrous outrage against the laws of war.

It results from the same course of reasoning that whenever the contest shall be terminated by the triumph of the Federal arms, whatever prisoners the Government may think fit to hold responsible for treason must be tried by the courts, under the direction of legal and constitutional forms. Only the question as to what persons shall be ar-

raigned is still left to the discretion of the Government, which will be required to take care that in making the selection it does not transcend the necessities of a proper example and the laws of humanity and mercy.

"When," says Vattel, "the sovereign has subdued the opposite party and reduced them to submit and sue for peace, he may except from the amnesty the authors of the disturbance, the heads of the party; he may bring them to a legal trial and punish them, if they be found guilty. He may act in this manner particularly on occasion of these disturbances in which the interests of the people are not so much the object in view as the private aims of some powerful individuals, and which rather deserve the appellation of *revolt* than *civil war*."

In the case of our Government the power to punish for treason is under the limitation of that clause of the Constitution which provides that "Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted."

Here, then, the sweeping power of confiscation for treason so vehemently urged by our zealous yet revolutionary friends cannot possibly be exercised without overturning the Constitution.

With such wonderful foresight did the wisdom of a better age provide for the protection of all the rights of life, liberty, and property that no ruthless hand, whether of fanaticism or revenge, can strike one of them down without first shattering into fragments the shield of the blessed Constitution which guards them all alike.

But if the Government cannot confiscate the *private* property of the rebels which is situated in the seceded States, neither can it claim the right to do so as to that which may be found within the limits of the loyal States, because the same constitutional guarantees are always opera-

tive to protect the property of citizens, whatever may be its locality. It is no answer to this reasoning to say that the rebel government has assumed the power to confiscate all the property situated in the seceded States belonging to persons domiciled or doing business in the loyal States, because the rebel government may perform in perfect logical accordance with its political theory many acts which the Federal Government cannot do without the utter subversion of its own theory of the war. The rebel government assumes that the Constitution as to it has become null, and under the pretension of its independence it treats the subjects of all other powers as aliens, and especially the citizens of the United States as alien enemies; but the theory of the Federal Government is as different as day from darkness. It affirms as a prime postulate of all its arguments, whether of the pen or the sword, that the Constitution is in as vigorous force as ever. Consequently should our Government claim the right to treat the people of the so-called seceded States as aliens the assumption would be logically a self-contradiction, because the war is waged upon the sole hypothesis of their being citizens.

The Government has clearly the power to forbid the passage of men or munitions of war into the States where the insurrection predominates, if intended to be used in aid of it, because the power to overcome the rebellious force at all necessarily implies the power to take away from it all the means of resistance; but it is plain that the Government can do this only by virtue of the war power, namely, the right to conquer by the military force a public enemy of the nation.

The preceding view fully accords with the recent acts of Congress and with the circular of the Secretaries of State and the Treasury, which both confine the right of capture to property used, or intended to be used, in further-

ance of the insurrection only; and the act of August the 6th employs the correct phraseology when it declares that all such property shall be "the lawful subject of *prize* and *capture* wherever found."

This places the right on its true foundation as a logical result of the war power; for the moment when property is appropriated, either in fact or intention, to purposes of organized hostility against a nation it loses its private character and becomes, instantly, public.

To avoid the constitutional difficulties which stand opposed to any general confiscation of Southern property another plan has been suggested, but one even more chimerical than those already considered, and this is to put forth a solemn declaration by Congress that the people of the seceded States are alien enemies, and then to treat them in accordance with such declaration.

Now, the first objection to this plan is that it proposes to recognize the very fact which the secessionists are waging war to establish, and which we are denying under arms before all the world, namely, that the so-called seceded States have *de jure* the political character of foreign powers, because there can be no alien enemies unless they be the subjects of foreign powers; hence if the United States by its legislation, concedes this fact, all the other nations of the earth would be justified in the immediate acknowledgment of the Confederate States as an independent government. We cannot expect on the part of other nations a refusal to admit what we ourselves see fit to proclaim in the most public and formal manner, and especially when it is their desire and interest to make the admission, even against our strenuous opposition. But an equally fatal objection is that it would not give the supposed power of confiscation, because, as we have already seen, the usages of civilized warfare will not allow us to touch the mere private property of even alien enemies. We could not do

it without denying at once our humanity and civilization and taking a voluntary relapse into barbarism.

Moreover, there is a third objection still more decisive, and that is that the act of confiscation, in a legal point of view, would be a mere nullity, because as soon as the war shall terminate with the restoration of the Union the traitors themselves must necessarily have the right to sue in the courts for the recovery of their property, and no plea can be imagined by which they could be barred, for certainly no one will pretend that they could be treated as alien enemies after the overthrow of the revolutionary powers, and therefore at the end of the war all their rights would stand again on the basis of the Constitution, and with no power in our system to divest them by any other means than a regular conviction and sentence under the guarantee of constitutional forms.

The Constitution expressly declares that "no person shall be deprived of life, liberty, or *property* without due process of law;" and hence Congress can have no authority to take away a man's property by legislative action any more than to take away his liberty or his life. Any deprivation of either must be in pursuance of a judicial determination founded upon proper legal process.

It is true that during the continuance of the war, and so long as the rebels maintain their attitude of open hostility to the Government, the latter may, for the time, treat them as alien enemies *de facto* for belligerent purposes, and consequently may prevent them from using even their private property in any manner to aid in the movement of the insurrectionary forces; but this right of *prevention* in the Government is one strictly appertaining to the military power. It is one of the rights incidental to martial law; hence it is one to be exercised by the President or his subordinate military agents and not at all by Congress. It is also perfectly clear that this right of the President to

prevent the rebels from employing their property in aid of the rebellion is but temporary, and since it is a power springing out of the war it must necessarily expire with the war. It is a mere power to prevent property from being used in a hostile manner against the Government and not any power to *divest* or transfer titles.

Moreover, any attempt on the part of Congress to take away or transfer the title to property by mere legislative enactment would be the palpable usuraption of a power which the Constitution has wisely vested in a different branch of the Government. To divest the title of property against the will of the owner is in no proper sense a legislative act, but one altogether judicial. But will any one pretend that either Congress or the President can exercise judicial functions? Such a confusion of powers is characteristic of the worst forms of despotism. The most bitter denunciation of historians has always been leveled at such acts of the executive or legislature as assume to deprive the subject of his property without a regular adjudication of the courts.

It has even been proposed to take away the property of secessionists and bestow it upon loyal men by way of compensating the latter for losses which they have sustained at the hands of other secessionists.

Now, aside from the consideration that such an act would be purely judicial, there may be stated a still more serious objection to its practical exercise. The punishment of any person for merely holding the opinions of the secessionists would be unprecedented barbarity. Opinion is not the subject of punishment at all with any but savages. Until thought has been evolved into action it can never be justly amenable to the censure of any human tribunal. Even the maxim *scribere est agere*, adopted by a judge whom the world regards with horror, in order to convict Algernon

Sydney of treason, has been denounced by all subsequent lawyers as well as historians.

Shall it be left to free Americans to change that atrocious maxim for the worse by inscribing on their criminal records *cogitare est agere* or *dicere est agere?* At all events, if even *thought* or *speech* could be considered treason the question would not be for the decision of Congress but exclusively for the courts.

But a tendency to usurpation still more alarming, although in a different direction, has lately been manifested on the part of Congress in the attempt of that body to control the operations of the War Department in matters of a purely military character. The members of Congress who have participated in this revolutionary project seem to be acting under the delusive idea that the Federal Legislature has inherited all the sovereignty of the British Parliament, and may therefore adopt any precedent found in the history of the latter. The British theory has been stated by Blackstone in this brief sentence: "Sovereignty and legislature are indeed convertible terms—one cannot subsist without the other." It is obvious, however, that our system is based upon an idea altogether different—that is to say, on the *distribution* of the sovereign powers, and not upon their *consolidation*, and hence with us it is axiomatic that no *branch* of the Government can exercise any powers others than those which are expressly given or necessarily implied; and, therefore, those who deny a given power to any department are not required to show a positive inhibition of the power of the Constitution. It is enough to say that such power is not conferred in that instrument. By what pretension of right can Congress then assume a supremacy over the War Power, to compel the latter to disclose secrets the revelation of which it deems detrimental to the success of our arms? Can we imagine a more

flagrant act of usurpation than this? And would it not clearly justify the Executive in the exercise of martial law in respect to all such members of Congress as join in this new species of rebellion? The same rule must apply to members of Congress as to the judges of the courts. If either undertake to interfere with the appropriate action of the military power, they must be put out of the way until the war is over, or at least until they withdraw their mischievous opposition to the only authority which the sovereignty of the people has by the Constitution itself invested with the competency to conduct the war at all.

Another inquiry of extreme moment relates to the power of suspending the writ of *habeas corpus* in the case of persons who may be arrested in the loyal States for alleged complicity with the rebellion.

Now, it is plainly of the first importance to obtain a correct answer to this question, and for two special reasons: First, because in the early stage of the rebellion the exercise of this power afforded the only available means to prevent the insurrection from drawing large military resources from the very heart of the Union, and perhaps also from spreading the contagion of treason into territory then mostly free from it, and the peril may be again repeated; and, secondly, because it has been against the manifestation of this power that the advocates and friends of secession have been most clamorous in their outcries of denunciation, thereby proving its practical necessity by the very invective which denied its lawfulness.

The power of suspension, whatever may be its nature and extent, rests upon this clause of the Constitution, "The privilege of the writ of *habeas corpus* shall not be suspended unless when in cases of rebellion or invasion the public safety may require it."

It is apparent that the language of the provision is perfectly lucid, as far as it goes, and the sole difficulty con-

nected with it is that it does not indicate the depositary of the power limited, either in terms or by implicit reference.

The consequence has been that different opinions have been entertained on the subject, some jurists of eminent character asserting for Congress the exclusive authority of suspension, while others of equal reputation have attributed the exclusive power to the President, and a third party, of no less legal celebrity, has located it distributively in Congress and the President as a concurrent power in both.

In the absence of any decisive critical test for the inquiry and amidst such disagreement, it does not become any one, much less one not a lawyer, to speak too positively of the matter. Nevertheless it does seem to the present writer, that one consideration has been overlooked in the discussion which is capable of throwing upon it a very clear light. It would seem that the shortest and most certain method of ascertaining *who* is to exercise the power, since no department is especially designated, must be to determine the class to which the given power naturally belongs, whether that be legislative or executive; and if the latter, then of what species, namely, whether it be civil or military.

But, viewing the subject from this analytic point, the *discretion* to suspend the writ is seen at once to fall naturally under the class of military powers of those which appertain to the direction of the public force against an armed enemy, whether foreign or domestic, because the Constitution itself defines the prescribed occasions when the writ can be suspended at all to be "cases of rebellion or invasion," where the "public safety requires it." Here two things must concur to justify the exercise of the power: There must not only be rebellion or invasion, but also a necessity to suspend the writ imposed by the public safety.

But all these terms relate properly not to the functions of *legislation* but to those of *execution* in the control of

military measures. It is the military force which cases of rebellion and invasion call into activity. It is the same force which great peril to the public safety puts in motion. It is this force, too, in the freedom of its evolutions, which the writ of *habeas corpus* may disturb and fetter, and therefore, by inevitable logic, it is the commander of the military force who ought to possess the power of setting aside the writ of *habeas corpus* when he finds it employed mischievously to defeat the operations of war.

Again, it would appear very difficult to determine beforehand, or for a numerous body of non-military persons, such as the members of Congress, to determine at all, the peculiar cases when and where rebellion or invasion may produce such danger to the public safety as to require the writ to be suspended. Rebellion may conceal its preparations so carefully as to come like the shock of an earthquake, without sign or premonition and at a time when Congress does not sit. An invasion, insignificant today, by changing the point of attack may become almost overwhelming tomorrow; and then the next day after the crisis of a single battle the peril to the public safety may be past; but it is obvious that as the peril to the public safety changes, either in time or place, so does the necessity which justifies the suspension of the writ of *habeas corpus;* hence if the power to suspend were vested exclusively in Congress the writ would probably seldom be suspended soon enough, and could hardly fail to remain suspended, at least in most instances, too long.

Moreover, the specific difference between legislative and executive power may be defined most accurately by a statement of their opposite functions. Thus the former makes laws, the latter puts them into practice, or, as expressed by Rutherforth, "The legislative power is the joint understanding of the society directing what is proper to be done." "The executive power is the joint strength of the society

exerting itself in taking care that what is so directed shall be done." In a word, the characteristic of legislative power is to speak; that of the executive power is to act; but the suspension of the writ in a special case evidently appertains not so properly to speech as to action, and hence all the attributes of the power in question seem to class it with those of execution and to preclude any salutary exercise of it on the part of Congress.

It may be that Congress has some kind of authority over the subject, in a general way, under the constitutional grant "to make rules for the government and regulations of the land and the naval forces."

Nevertheless, if Congress can claim any such regulative authority its operation must necessarily be very much restricted by the fact that the supreme legislative power has in the Constitution defined the *occasion* when alone the privilege of the writ of *habeas corpus* can be lawfully suspended with as great a degree of particularity as the nature of the case admits and has left nothing to the discretion of Congress, nor is there any power in our system which can modify the constitutional definition by increase or subtraction of a single term, for surely no Federal authority can suspend the writ, unless "in case of rebellion or invasion;" but not even then unless the public safety may require it.

Are we not, then, obviously entitled to take another and bolder step in the analysis of this power?

Since it has been proved that the power of suspension arises only in special circumstances relating exclusively to the operations of war, may we not affirm that when these circumstances concur the writ *eo instanti* stands suspended by force of the Constitution alone, and that it then becomes not so much the right as the duty of the military commander to proclaim it. This view would confer on the chief of the military force in any district, as soon as

the concurrence of the essential facts defined in the Constitution should become clearly manifest, a full authority to declare the occasion present for asserting the supremacy of martial law, for this martial law differs from civil law in the same manner as a state of war is opposed to a state of peace. War has its own law as well as peace. The law of war is martial law, but martial law is nothing more than the application of military force to overcome the resistance of an enemy who acknowledges no other rule than that of force, and hence, in the presence of such an enemy, the military commander must necessarily have the power to set aside every civil authority which might assume to interfere in any way so as to control or embarrass the operations of the war. A denial of this power virtually carries with it the denial of any power to render war effectual in any case whatsoever. If the civil judge can issue a *writ of ejectment* for the ground upon which a military encampment or fortress is situated, or *replevin* for the artillery horses on the eve of battle, or a *habeas corpus* to bring before him the bodies of soldiers or captives alleged to be illegally detained, then there is an end of all military authority, and the commander might as well raise the white flag and submit to the enemy at once. Hence it is unquestionable that the chief of any distinct military command must necessarily have the right to employ martial law; but that is the right to exclude the civil judge, and that again is *per se* a suspension of the writ of *habeas corpus*, and thus the old maxim, *Inter arma leges silent*, is as true now as it was the day when Cicero penned it.

It is the command of the military chief giving his orders to the military force which hushes the laws into so deep a silence.

But even the proclamation of martial law does not supersede the ordinary functions of judicial power to any greater extent than may be requisite to accomplish the special

military purpose of the occasion which necessitates the measure. It does not confer upon the commander any authority to try offenses other than those against the usages of war. It does not invest him with a commission to determine civil suits between private parties. He is arbiter only in the great controversy of arms, and he applies to the issue before him not the rule of municipal jurisprudence but the stern law of war. His sole office is to direct the use of military force so as to conquer a given resistance, and he removes out of his way whatever impediment may tend to prevent or obstruct the successful employment of that force. Hence if even judicial authority stands in the way he puts it aside for the time. But this definition of martial law obviously leaves the judge at liberty to sit in all cases which do not fall within the province of military command or otherwise affect such means as may be dictated by the policy of war.

We have now reached the last question appertaining to the general subject of power, and this refers to the authority of the President to arrest and imprison the persons of alleged friends and adherents of the rebellion in the loyal States.

If one examines this inquiry with proper attention and freedom from prejudice he cannot fail to be astonished that it should ever have been mooted at all, for can it matter, in the view of the Constitution, in what part of the United States the "public safety" may require the writ of *habeas corpus* to be suspended, provided the necessity results from a case of "invasion" or "rebellion" waged anywhere against the national flag? Or can it matter, according to the laws of war, in what locality an adherent of the public enemy may choose to carry on the work of a common hostility? If a foe taken on the battlefield in Virginia may be imprisoned during the war, what rule of natural justice shall exempt from a like fate the friend of treason

who is sending to its aid arms or information from Maryland? Is the character of a rebel spy more sacred than that of a rebel soldier? But neither the man of Virginia nor the man of Maryland can be said to be imprisoned merely because he is assumed to be a traitor, which would be a reason for detention under the civil authority only, but both of them are imprisoned because they belong to the revolutionary force, which is exclusively a military reason, and can this be represented as a matter of grave complaint? What! shall it be said that any person can plead as a cause of exemption from confinement the singular excuse that besides being an enemy he is a traitor also?

It is as clear as sunlight to all who are willing to see that the same provisions of the Constitution and the same laws of civil war which justify the Government in imprisoning its foes taken in open fight will equally justify it in the capture and detention not only of those who may be on the march to join the enemy but also of those who may be secretly preparing to raise the colors of the enemy on any part of the national territory, and this latter was the precise predicament of the persons arrested and detained under the order of the President in the State of Maryland and elsewhere. They were all, without a single exception, either pledged to the allegiance of the revolutionary power or else making preparations to strike in its favor and against the Government; and the political authority of a nation, any more than any private person, is not obliged to wait until a blow impending is actually struck, which might perhaps then prove irresistible; but the Government, like the individual, may anticipate the blow by disarming its antagonist and by holding him until he ceases to threaten hostilities, or at least until the force with which he has been in concert has been overcome or weakened so far as to have ceased to be dangerous, nor is there one writer upon natural law that does not recognize such a power of self-protection

in every government. What the right of self-defense is to individuals the war power is to nations; and in every case the necessary prevention of danger stands justified by the same reasons which justify resistance when the peril is present. Indeed, the only difference in rational principle between the case of an insurgent taken in battle and that of an unarmed *adherent* of the revolutionary force refers not to the question of right but to the question of evidence. In the case of those who are captured in fight there can be no doubt as to the fact of hostility, while in the case of others every degree of doubt may be possible.

There is, however, one criterion, the application of which furnishes a testimony as infallible upon the question of hostility as afforded by any belligerent acts whatsoever, and this criterion becomes decisive whenever in any case the oath of allegiance is demanded by the Government and refused on the part of any citizen of the United States.

Allegiance is defined by Lord Coke to be "a true and faithful obedience of the subject due to his sovereign," or, in the words of Justice Story, "allegiance is nothing more than the tie or duty of obedience of a subject to his sovereign under whose protection he is;" but however the thing may be defined, it is manifest from its very nature, and all the authorities agree in this opinion, that every government has a right to exact from all citizens, at its discretion, a public pledge of their fidelity by taking the oath of allegiance or other formal or solemn declaration of loyalty. "Every citizen," says Chancellor Kent, may on a proper occasion be required to take the oath of allegiance."

This principle acquires a peculiar interest and importance for us from its pertinence to a case of insurrection. The civil war has divided the common country for a time, and raised up in it a revolutionary power which asserts its independence by an appeal to arms; but what would be the

result as to the *status* of indvidual citizens if this revolutionary power should be able to make good its claim and thus permanently dismember the nation into two separate and independent empires?

The case is simply this: a nation previously one divides itself in two. Then what rule does the allegiance of the individual citizen follow? As this allegiance was before one in reference to the one nation, how shall it be distributed between the two nations emerging out of the revolution? And here Chancellor Kent concurs with other eminent jurists in laying down the rule that during the revolutionary contest every citizen has the right of election and may transfer his allegiance to either of the rival governments at his option. Of course this rule is limited by the essential qualification that the right of election asserted remains merely *in fiere* while the war is progressing and can only become perfect when the nationality of the new government has been fully established. Hence it follows that whenever an insurrectionary force is organized in any country, and especially when it puts forth the claim to act as an independent power, then the lawful government has necessarily the right to treat such adverse force and all those who adhere to it by election as public enemies, at least *ad interim*, and therefore to deal with them according to the established usages of war. In other words, the Government may choose to admit provisionally or for belligerent purposes the assertion of the revolutionary power and of its adherents that it is an independent public enemy, and therefore may act upon that assumption not as an abstract truth but as a practical postulate granted on the other side, for certainly there can be no wrong or shadow of injustice in attributing to any person the very character which he claims, at the peril of life itself, to be his own. It is, indeed, very true that the Government is not obliged to recognize this character of belligerents asserted by the

forces of the rebellion. To do so is the concession for a time of a privilege and not the denial of any right even pretended.

The Government, if it should see fit, may consider the matter in a far different light, and may treat it as a question of bald treason by turning over all captives taken in arms, as well as all active adherents of the insurrection, to be tried and punished in the criminal courts; and it must do either the one or the other. It must imprison or it must punish, or else renounce all pretensions of political authority and virtually abdicate its functions. There is no other imaginable alternative.

Now, suppose the Government were to exercise its prerogative to try and punish while the war is going on and the event more or less doubtful. One general outburst of indignation would be heard from the whole civilized world against the barbarity of such a proceeding, and none would be louder in their censure than those pretended friends of constitutional freedom who now so bitterly assail the administration for employing the more humane and prudent remedy of imprisonment.

However, although it must be admitted that the Government has the naked, legal right to try the captives it has taken for treason, such a course would not only be contrary to civilized usage, but also a great moral wrong, because so long as the forces of rebellion are able to keep the field there always will remain the bare possibility that they may ultimately prove successful. But what follows then? Why, that none of them can be considered guilty of any crime at all; for, in the view of all nations, success justifies from the guilt of treason, or, rather, transforms it into complete legitimacy.

And hence the epigram:

> "Treason never prospers. What's the reason?
> That when it prospers none dare call it treason."

Therefore there was but one course left for the Government, namely, to imprison all captives until the question of their final guilt shall be determined by the result of the late war.

To ascertain by competent evidence who are adherents of the revolutionary power in the loyal States the Government has applied the criterion of a tender of the oath of allegiance, discharging all who show themselves willing to pledge their fidelity to the nation as their fathers constituted it and detaining those only who refuse to acknowledge their subjection to Federal authority. Could anything be at the same time more just or more merciful than this? Besides, as an evidential test, the rule operates demonstratively, because whoever refuses to pledge his allegiance to the Government under which he lives, by that act virtually denies its jurisdiction over him and voluntarily assumes the character of a public enemy. By the same conduct he also reveals the profound hostility of his heart towards the Federal authority and the obstinate determination of his will to resist it.

Shall the President, then, be reproached for conceding to these adherents of rebellion the very character which they willingly and even proudly assume? May he not well recognize them as what they are, *de facto*, though not *de jure*, enemies of the nation?

And if the President can do this he may deal with them while the war continues, not as criminals merely, but as prisoners of war; but if they can be deemed prisoners of war it must be admitted by all that no writ of *habeas corpus* can touch the case of their detention, because that rests exclusively in the discretion of the war power. To hold otherwise would be to transfer the authority of a chief command from the President and vest it in the judges of a hundred local courts.

It must be admitted, however, that any alleged adherent

of the insurrection may renounce the benefit of this belligerent character at his pleasure. By taking the oath of allegiance he may recede from his voluntary attitude as a public enemy and then demand a trial before the courts; but this the Northern traitors have shown themselves utterly unwilling to do, because they are well aware of the fact, which many Union men have so strangely failed to comprehend, that the imprisonment complained of is a benefit rather than a burden, not an oppression at the hands of tyranny, but the privilege of exemption for a time at least from the merited punishment of treason. Hence, although the Government has tendered a release to all these prisoners upon the condition of swearing allegiance, a condition so easy and also in accordance with duty, they yet deliberately reject the boon of liberty. Each one carries the key to his own jail in his own pocket, but no one chooses to unlock the prison doors, because all are conscious that safety for them lies within and not without the walls.

The discussion thus far has related chiefly to the powers of the Government in its dealings with the rebels in arms or with such adherents of treason as may be secretly giving them assistance, and a few words must now be devoted to the subject of its duty in respect to the loyal citizens, whose misfortune it is, but certainly not their fault, to have their homes within the limits of the seceded States.

In order to comprehend clearly this duty on the part of the Government it may be necessary to define concisely the present political condition and relation of the hundreds of thousands in the South who still cling in firm allegiance of the heart to the Constitution, which has been annulled by the authorities of their States, and the Union whose protection is so far away.

Now, in the first place, it is true beyond all controversy that whenever a State withdraws from the Union wrongfully—that is to say, in a case where the Federal compact

has not been broken by the General Government—such action on the part of the State is a breach of her own State constitution as well as of the Federal Constitution, because each of these constitutions is an essential part of that complex political system under which we live, and every citizen inherits different rights and is bound by different obligations under each, the whole of these together blending to make the sum of his civil liberties and duties. Therefore any action of either Government, whether of the nation or of the State, which would take away the vested rights of the citizen of either must necessarily involve a violation of the general political compact which secures all his liberties though by different means; and that the secession of a State does thus directly tend to diminish the rights of its own citizens may be proved in the most conclusive manner. For example, the Federal Constitution guarantees a republican form of government to every State, and therefore to the citizens of every State; but the act of secession blots out forever that valuable political right of the citizen and leaves it to the caprice of the State government to establish either an aristocracy or monarchy, or what the seceded States have in fact established—a pure military despotism.

Again, the citizen of a State, by force of the Constitution, is virtually a citizen of every other State in the Union; but the act of secession obliterates this precious privilege also and leaves its victim an alien to one-half of the Federal territory, perhaps to the very State of his birth, even to the native mountain which was as a brother of his boyhood.

Again, the right of every citizen of a State in her appropriate constitutional relation is to have his liberty and independence from the control of foreign powers as well as from the lawless force of domestic revolt protected by the whole public power of the United States; but the act

of secession tears this glorious right away, too, and places the citizen of a once great empire in a condition of despicable national inferiority. Hence, according to the settled principles of natural and political law, the act of secession by these gross and palpable violations of the social compact discharges all citizens from their allegiance to State authority, and therefore leaves them at perfect liberty to constitute a new State anywhere within the limits of their former State, now dissolved by the usurpation of a force hostile to the National Government, or if not possessed of sufficient numerical strength to maintain a State organization, to enter into the territorial condition under the full sovereignty of the General Government, if they choose to do so.

This latter alternative results necessarily from the premises, because the right of citizens to constitute a State, like all other rights, may, of course, be waived at their pleasure.

In the second place, since the discharge of the allegiance to their own State on account of its palpable violations of the Constitution cannot sever the tie which binds such citizens to the General Government, it follows necessarily that the latter is obliged by a sworn duty to interpose for the protection of their constitutional rights and to overthrow, if possible, those revolutionary powers which at once oppress the liberties of the individual and defy the authority of the nation; but if the United States should from any cause prove unable to expel the revolutionary force from every part of a seceded State, it is, nevertheless, a solemn national duty to put it aside as far as may be, and thus give the loyal citizens an opportunity to form a new State for themselves, at least in that portion of the former State which may be so freed from the sway of the insurgents, or to become a Territory under the sovereignty of Congress, at their option.

The duties of allegiance and protection are reciprocal.

Hence if the supreme power of the nation should not within a reasonable time afford that protection, which is their Federal right, to its citizens of the South, they will be forever released from their allegiance, and thus will pass away, as if it had never been, that glorious Union which has been the center of so many precious hopes, the subject of so many earnest prayers, the magical name which oppressed nations have so long murmured in all their dreams of liberty, and which had power to make tyrants tremble on the most ancient thrones. Gone forever will then be the most promising example of popular government which the annals of time have known, and perhaps ages of dreary darkness must roll away before humanity shall recover heart to repeat the example which has now so sadly failed! The misfortune will not be felt merely upon this continent or by the present age only. It will be as well the memory of a mighty loss to the world at large and to generations both near and far remote in the future years.

CHAPTER III.

[Note by Miss Carroll in the spring of 1891, to accompany republication of "The constitutional power of the President to make arrests and to suspend the writ of *habeas corpus*" examined.]

Attorney General Bates, with whom I was intimately acquainted, said he would like my opinion in reference to the one he had just given, and wished it in writing. I therefore prepared the following, which met his approval and the cordial approval of the President and his entire Cabinet, and was largely circulated.

A. E. CARROLL.

THE CONSTITUTIONAL POWER OF THE PRESIDENT TO MAKE ARRESTS AND TO SUSPEND THE WRIT OF HABEAS CORPUS EXAMINED.

BY ANNA ELLA CARROLL.

SEPTEMBER, 1861.

The conflict of opinion which is expressed throughout the country by various editors and judges of unquestioned loyalty upon the power of the President to make arrests and to suspend the writ of *habeas corpus* seems to demand further discussion. I therefore briefly review the learned opinion of the Attorney General of the United States in order to show that the President in arresting persons in criminal complicity with the insurgents and in the suspension of this writ has only exercised the constitutional power

vested alike in all his predecessors in office and does not require any apologist to defend him as an innovator of the Constitution.

Judge Bates grasps the entire system of our free government and admirably contrasts it with the governments of Europe. In European nations the sovereignty resides not in the people, but in the government. Their governments exercise and possess absolute power; whereas, according to the American theory, the sovereignty resides in the people, and their government possesses only limited and delegated powers, not absolute. He adverts to the historic fact that the enmity of the American people of the Revolution was not against the legislative or judicial powers of the English government, but against the king. The reason was that the *crown* represented and assumed the exercise of this absolute power, making the people but the subjects or slaves of the individual man. The American people, therefore, in making a government without a throne were scrupulously careful to reserve the sovereignty to themselves, and hence their government can exercise no other powers than those the *people* have conferred upon it. He ably shows that the people were equally precise in distributing the granted powers to three coördinate departments, each independent of the other; and the President, though in no sense a sovereign, is independent in his sphere and not subordinate to the other departments of the Government. He presents the philosophic idea that our fathers never attempted to provide a common judge or arbiter in cases of conflict between the executive, judicial, and legislative powers of our system, and therefore deduces that the President cannot rightfully be called in question in the exercise of his power by the legislative or judicial departments. Hence, in using his constitutional powers, he is in no way affected by their decisions to the contrary, each being limited in their spheres and coördinate and independent. That proposition being

established, he proceeds to ascertain precisely what powers the President may constitutionally exercise. He proves conclusively that the President is only a civil magistrate, although by the Constitution he is made the "Commander-in-Chief of the Army and Navy and of the militia of the several States when called into the active service of the United States," and in directing the military power of the country he does so as a *civil magistrate and not as a military chief.*

This is the first time in our history that we have encountered the horrors of civil war, the first time we have felt that we were in contact with the physical force of the nation.

In our previous history this *force* has been directed against *foreign* rather than *domestic* foes, and the novel spectacle of the exercise by the Presidents of extraordinary military power has never been witnessed before by the American people! Hence they had not realized its nature or extent, which, nevertheless, is a constitutional power, and would have been exercised by every faithful Chief Magistrate who has administered the Government under a similar emergency.

In making plain the important truth that although we have hundreds of thousands of men moving in vast armies in the field they move in strict subordination to the civic magistracy the Attorney General has done an invaluable service to our constitutional liberty.

So long now as our legislatures and courts refrain from embarrassing the President in the exercise of his powers and so long as the vast military power remains subject to his control, just so long and no longer are our liberties safe!

If the time shall ever come when weak or over-zealous editors and corrupt politicians shall persuade judges or legislators to transcend their constitutional powers by at-

tempting to circumscribe or restrain the President's legitimate action, or whenever a military chieftain shall acquire such an influence over the armies under his control as to disregard the orders of the President and set the military *above* the civil power, *then are our liberties upon this continent hopelessly gone!*

Judge Bates next notices the duties imposed on the President by the Constitution, which requires him to "preserve, protect, and defend" the same and to execute the laws over the nation. He argues that in case of rebellion or invasion, when the judicial power is weakened or overborne, so that the civil authorities cannot be exercised by the ordinary agencies of governments, it becomes the duty of the President to "take care" that the laws shall be executed, and for this purpose (as in the present *case*) it is necessary to use armies.

In such an extraordinary exigency the President is made the *sole* judge of the manner in which it is most prudent to employ the powers entrusted to him. He must decide whether the rebellion or invasion exists to the extent of displacing the civil power, but *in executing the laws by the army he does not subordinate the civil or elevate the military power.* He holds the military ever *subject and subordinate* to the civil authority. He is *not* made a militray dictator, a warrior, or a usurper in his constitutional exercise as "*Commander-in-Chief,*" but is required to stay at the capital, in the Presidential Mansion, and to hold in his hands the civil authority as *supreme over armies.*

The Constitution does not call on the gowned judges; they may sit unconscious of the fact that war exists, if they please, until the armed force comes within their presence, just as they did when the Capitol was on fire a few years ago. When the news reached the Supreme Court Judge Taney inquired where it existed, and being informed it

was in the library, remarked that they would proceed with the case until it reached the Supreme Court room. So I presume he will continue in the present struggle unless the fires of the rebellion should catch and consume his own chambers.

Under this branch of the argument the Attorney General shows that the Constitution does *not* invest the judicial department of the Government with the functions of determining whether rebellion or invasion exists, that being a political question, *its object being to destroy the political government of the nation and establish one upon its ruins.*

He frees himself with extraordinary ease from the mere technicalities of his profession and rises at once to the true dignity and comprehensiveness of the statesman.

He demonstrates that the President, as the political head of the Government, is charged with the solemn duty of making war against the rebellion and of arresting and holding as prisoners those who in the exercise of his discretion he believes to be the friends and accomplices of treason.

He has and exercises no judicial, and the judiciary has no political powers and claims none; therefore *no court or judge can take cognizance of the political acts of the President.* If, then, in time of rebellion the President, in the exercise of his powers (whenever the public safety may require it, of which he alone is judge under the Constitution), shall arrest any traitor or any one found giving aid or comfort to the enemy, Judge Bates proves to demonstration that no *judge or court* can undertake to reverse this action on the part of the Commander-in-Chief.

He recurs to the common law for the true exposition of the writ of *habeas corpus.*

He shows that it is a high prerogative writ, and by our Constitution the country is at all times entitled to know *why* the liberties of any of its citizens are restrained,

"*unless when, in case of rebellion or invasion, the public safety may require the suspension of the privilege.*"

He felicitously reconciles the conflict of opinion, and shows that the power to suspend the *authority* of the judiciary to issue the writ is vested *alone* in the legislative department; but the power to suspend the privilege of the party arrested during the time of invasion or rebellion is *vested alone* in the executive department, which is charged with the *public safety.*

Now, should a judge assume to issue a writ of *habeas corpus* for the discharge of a political prisoner "when in case of rebellion or invasion," the answer is that the President has suspended the PRIVILEGE of the prisoner, "*the public safety requiring it.*" Hence it is *no more necessary formally to suspend the writ of habeas corpus by a declaration of martial law* before arresting a traitor than it is to suspend the writ of *replevin* before seizing arms or munitions of war!

Here he strips the question of its fallacy and throws an achromatic light upon the subject.

He proves that all the powers of the President would be nugatory in suppressing rebellion or invasion by the capture of insurgents or the seizure of munitions of war if a judge might discharge the prisoner by the writ of *habeas corpus* or the munitions of war by a writ of replevin.

In short, that it would leave the enemy in entire power to war upon the Government to the total subversion of our civil liberty.

This is the only Government upon earth where the rights of the people are secured, and the Attorney General shows its extreme humanity, as well as his own benignity of character, on the question of arresting political offenders.

The President, so far from violating, is *heroically defending* the rights of Americans in arresting criminals who are

engaged in secret or covert war upon this Government. *Instead of handing them over to the courts for trial, condemnation, and execution,* as he has the clear right to do and as every other government but ours upon earth unquestionably *would,* he only holds them as captives to prevent them from destroying the blood-bought rights which every citizen who remembers that he is a man and was born of a woman should fly to rescue and defend.

ANNA ELLA CARROLL.

MARYLAND, *September, 1861.*

CHAPTER IV.

[Note by Miss Carroll in the spring of 1891, to accompany the republication of "The Relation of the National Government to the Revolted Citizens."]

The subjoined document was written after a conversation with President Lincoln, who dissented from several remarks made in the Senate at the time, and to whom the pamphlet was presented for examination immediately after it was written by the author, and he gave it his full and unqualified indorsement. It was at once distributed in both branches of Congress.

A. E. CARROLL.

THE RELATION OF THE NATIONAL GOVERNMENT TO THE REVOLTED CITIZENS DEFINED.—NO POWER IN CONGRESS TO EMANCIPATE THEIR SLAVES OR CONFISCATE THEIR PROPERTY PROVED.—THE CONSTITUTION AS IT IS THE ONLY HOPE OF THE COUNTRY.

BY ANNA ELLA CARROLL.

Congress has now under consideration the question of the power and expediency of abolishing slavery and confiscating the property, real and personal, of all or a large class of the rebels in arms. A question of more transcendent importance than any that ever before engaged the attention of the American people.

With an earnest desire that the country may not be led

to the adoption of a mistaken and fatal policy, I propose now to contribute my best efforts to a further understanding of this vital subject.

No one doubts the power or the duty of the Government to suppress the rebellion, to use the army and navy and all the military resources of the country to capture the rebels and kill them if they will not submit, and destroy their power to war upon us, but I do not think there is any grant in the Constitution, but rather an express inhibition upon the power of Congress to abolish slavery or confiscate the property of rebels.

There are two clauses in the Constitution which especially refer to the confiscation of property. The first defines the crime of treason and authorizes Congress to prescribe the punishment, inhibiting, however, the confiscation of property beyond the life of the offender. The second is an absolute prohibition to Congress of confiscation altogether. The first defines the crime in these words:

"Treason against the United States shall consist in levying war against them or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court."

"The Congress shall have power to declare punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted."

Treason is not an offense against society, but an offense against its government, and in all ages a disposition has been evinced on the part of the governing power to construe everything as treason which opposed it, and this arises from the natural passion of revenge, the desire to punish for opposition to its authority, the rapacity common to all in the possession of political power, and the desire to obtain the money or estate of the convict.

Justice Story, in commenting on this clause of the Constitution, says:

"The history of other countries abundantly proves that one of the strong incentives to prosecute offenses as treason has been the chance of sharing the plunder of the victims. Rapacity has been thus stimulated to exert itself in the service of the most corrupt tyranny, and tyranny has been thus furnished with new opportunities of indulging its malignity and revenge, of gratifying the envy of the rich and good, of increasing its means to reward favorites, and to secure retainers for the worst deeds."

This feeling is so strong in all governments that Montesquieu was so sensible of it that he has not scrupled to declare that if the crime of treason be *indeterminate, that* alone is sufficient to make any government degenerate into an arbitrary power.

The history of England is full of melancholy instruction on this subject, nor have republics been exempt from violence and tyranny of a similar character.

The *Federalist* has justly remarked "that new-fangled and artificial treason has been the great engine by which factions the natural offspring of free government have usually wreaked their alternate malignity on each other."

It was under the influence of these admonitions, furnished by history and human experience, that the convention deemed it necessary to interpose an impassable barrier against arbitrary construction, either by *courts* or by *Congress*, upon the crime of treason. Hence it was that the authors of our Constitution guarded the rights of the citizen by defining specifically in *what* the act of treason consists and limiting the power of Congress in its punishment by absolutely inhibiting the confiscation of the estate of the traitor to the Government, leaving it free to pass to his heirs.

The second clause of the Constitution in reference to

confiscation is: "No bill of attainder or *ex post facto* law shall be passed."

Now, it is to me a matter of great surprise that any should doubt but that the bills before Congress are in direct conflict with this clause.

These bills assume that certain parties have committed treason and ought to be punished; but, being beyond the jurisdiction of the United States, or in States where the civil authority has been expelled, they cannot be brought before the courts of the country for trial; therefore Congress shall adjudge them guilty of treason, forfeit their slaves and entire estates, and proceed directly to execute this legislative decree by deeds of manumission to the slaves and seizure and absolute forfeiture of all their estates as a punishment for the crime and as "indemnity for the past and security for the future."

If the object had been to have drawn a bill of attainder directly in *conflict* with the Constitution, I do not think one could have been made more efficient or more operative than some of the bills which have been pressed before Congress.

A "*bill of attainder*," as used in the Constitution, is a technical term, and we must therefore look to the common law and the concurrent history for the correct interpretation of its meaning.

Woodison in his lecture says:

"But, besides a regular enforcement of established laws, the annals of most countries record signal exertions of penal justice adapted to exigencies unprovided for in the criminal code.

"Such acts of the supreme power are with us called *bills of attainder*, which are capital sentences, and bills of *pains and penalties*, which inflict a milder degree of punishment.

"In these instances the legislature assume judicial magistracy, weighing the enormity of the charge and the proof

adduced in support of it, and then deciding the political necessity and moral fitness of the punishment."

Justice Story says:

"Bills of attainder, as they are technically called, are such special acts of the legislature as inflict capital punishment upon persons supposed to be guilty of high offenses, such as treason and felony, *without any conviction in the ordinary courts of judicial proceedings.* If an act inflicts a milder degree of punishment than death, it is called a bill of *pains and penalties;* but in the sense of the Constitution it seems that bills of attainder include bills of pains and penalties, for the Supreme Court has said: 'A bill of attainder may affect the life of an individual or may confiscate his property, or both. In most cases *the legislature assumes judicial magistracy, pronouncing against the guilt of the party without any of the common forms and guards of trial* and satisfying itself with proof, when such proofs are within its reach, whether they were conformable to the rules of evidence or not. In short, in all such cases the legislature exercises the highest power of sovereignty and what may be properly deemed an *irresponsible despotic discretion,* being governed solely by what is deemed political necessity or expediency.'" But the advocates of the policy of general confiscation, being unable to controvert this authoritative exposition of the term *bill of attainder,* assume the extraordinary position that the prohibition is *not binding* on Congress during a time of rebellion. I am unable to comprehend how any one can assume this position, for nothing is more certain than that this prohibition was inserted in the Constitution *only* to prevent the exercise of this arbitrary power during a rebellion.

The authors of our Constitution never apprehended that Congress would assume to exercise *judicial magistracy* except in time of rebellion. They knew well that there never was any motive in time of *peace,* and even if there were

that Congress would not attempt its exercise, for it is only in times of conflict between the public authority and the people that governments have ever attempted the exercise of this extraordinary and arbitrary power.

Justice Story says:

"Bills of this sort have been most usually passed in England in times of rebellion or of gross subserviency to the crown or of violent political excitement—periods in which all nations are most liable (as well the free as the enslaved) *to forget their duties and to trample under foot the rights and liberties of others.*" * * * Such acts have been often resorted to in foreign governments as a common engine of state, and even in England they have been pushed to the most extravagant extent in bad times, reaching as well to the *absent* and the *dead* as to the living.

"The injustice and iniquity of such acts in general constitute an irresistible argument against the existence of the power. In a free government it would be intolerable and in the hands of a reigning faction it might be and probably would be abused to the ruin and death of the most virtuous citizen."

In support of the policy of confiscation its advocates have searched universal history, from "the time when Ahab took the vineyard of Naboth, and David gave away the goods of one of the confederates of Absalom," down to the most arbitrary acts of Napoleon.

They have also cited the various penal enactments of the Colonies during the American Revolution in its justification.

It was unquestionably *these very acts* of confiscation by the Colonies which led to the clauses in the Constitution prohibiting it in Congress and the States.

Story, in remarking on these acts of the Colonies, says in a note:

"During the American Revolution this power was used

with a most unsparing hand, and it has been a matter of regret in succeeding times, however much it may have been applauded *flagranto bello.*"

Never were a people more jealous of liberty than our forefathers were at the formation of the Constitution, and naturally so, too, as upon that Constitution depended the fruits of the independence which they had just achieved at the cost of so much treasure and blood. To guarantee this liberty they provided in the Constitution for *trial by jury in criminal cases; the definition and punishment of treason; the prohibition of bills of attainder*, &c.

But the people feared that these guarantees were not sufficient for the greatest protection of their liberties, and hence the fourth, fifth, and sixth amendments restricting the exercise of these grants of power in these words:

"The right of the people to be secure in their person, houses, papers, and effects against unreasonable searches and seizures *shall not be violated*, nor shall any person be deprived of life, liberty, or property *without due process of law*, nor shall *private property* be taken for public use *without just compensation;* the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State," &c.

Story, in his comments on the vital importance of these amendments, which he characterizes as a bill of rights, says:

"It is not always possible to foresee the extent of the actual reach of certain powers which are given in general terms. They may be construed to extend (and perhaps fairly) to certain classes of cases which did not at first appear to be within them. A bill of rights, then, operates as a guard upon an extravagant or undue extension of such powers. Besides, as has been justly remarked, a bill of rights is of real efficiency in *controlling the excesses of party spirit.* It serves to guide and enlighten public opinion and

to render more quick to detect and more resolute to resist attempts to disturb private rights. *It requires more than ordinary hardihood and audacity of character to trample down principles which our ancestors consecrated with reverence,* which we imbibed in our early education, which recommend themselves to the judgment of the world by their truth and simplicity, and which are constantly placed before the eyes of the people, accompanied with the imposing force and *solemnity of a constitutional sanctity.* Bills of rights are a part of the *muniments of freemen,* showing their title to protection, and they become of increased value when placed under the *protection of an independent judiciary,* instituted as the appropriate guardian of the public and private rights of the citizens."

It is sad to witness Senators and Representatives in the great Republic of the United States, in contempt of the warnings of history, drawing their principles and precedents from the most cruel and revengeful tyrants, and displaying a "hardihood and audacity of character in trampling down the principles which our ancestors have consecrated with reverence, which we imbibed in our early education, which recommend themselves to the judgment of the world by their truth and simplicity, and which are constantly placed before the eyes of the people, accompanied with the *imposing force and solemnity of a constitutional sanction.*"

We are not permitted to doubt but that these bills originate in the worst and most malignant passions of the human heart, and are pressed in utter *contempt* of our constitutional guarantees.

Listen to Senator Sumner's words, uttered on the 19th of the present month, in the country's Senate chamber:

"With the *provision in our Constitution applicable to jury trials in criminal cases,* it is obvious that throughout the whole rebel country there can be no conviction under such

statutes. Proceedings would fail through the disagreement of the jury, while the efforts of the counsel would make every case an occasion of irritation. For weal or woe, the gallows is out of the question; it is not a possibility as a punishment for this rebellion; *nor would any considerable forfeiture or confiscation be sanctioned by a jury* in the rebel country. * * *

"Surely we ought to take all proper steps to avoid such failure of justice. * * *

"Strike down the leaders of the rebellion and lift up the slaves.

"But the tallest poppies must drop. For the conspirators who organized this great crime and let slip the dogs of war there can be no penalty too great.

"They should be not only punished to the extent of our power, but they should be stripped of all means of influence, so that, should their lives be spared, they may be doomed to wear them out in poverty, if not in exile. To this end their property must be taken; but the property of the leaders *consists largely of land owned in extensive plantations.* It is just that *these should be broken up*, so that they can never be again the nursery of conspiracy or disaffection. *Partitioned into small estates*, they will afford homes to many who are now homeless, while their peculiar and overbearing social influence will be destroyed.

"Poor neighbors, who have been so long duped and *victims*, will become independent settlers of the soil. Brave soldiers who have left their Northern skies to fight the battles of their country, resting at last from their victories and changing their swords into plowshares, will *fill the land with Northern industry and Northern principles.*"

Here is a distinct proposition to set aside the most sacred guarantees of the Constitution, to uproot the social system of one-half of the American Union, numbering in the aggregate some twelve millions of souls, and to partition their

land to the poor, and to the slaves, and to the soldiers of the other half of the Union, and to "fill the South with a foreign industry and foreign principles."

I cannot recall to memory any instance surpassing the atrocity of this proposition in all the annals of despotism. But the advocates of confiscation by Congress feel it obligatory upon them to find some support in the Constitution for the exercise of this power.

Senator Howard, in his argument, assumes that the power "to declare war, to make rules concerning captures on land and water, to raise and support armies, to provide for calling forth the militia, to suppress insurrection and repel invasion" *does by implication* give this right, and he claims it as a *war measure*.

He says:

"If Congress has not the power to confiscate the property of the enemy as a punishment and as an indemnity for the cost of the war that the American people have thrown away for all time to come the most efficient means of crippling and humbling the enemy."

This theory of Senator Howard has been adopted, I believe, by all who have spoken on this side of the question whose speeches I have examined.

The argument is this: Because Congress has the authority to confiscate the property of a subject of a *foreign* State in time of war and vest it in the United States, therefore Congress has the authority to confiscate the property of a citizen of the United States in time of civil war and vest it in the Government of the United States.

This, I apprehend, proceeds from a total misconception of the true nature of the Constitution and the principles of international law.

The right to punish an enemy and hold his property responsible for damages is inherent in all nations, but *how* this right shall be exercised depends upon the peculiar

structure of their government. In ours the right to punish a *foreign enemy* and hold his property liable for damages is vested by the Constitution in Congress as the supreme legislative power of the nation; but the right to punish a domestic enemy and hold his property liable for damages is *exclusively* vested in the executive and judiciary departments.

"In a state of *equality*," says Rutherforth, "after an injury is committed any who have suffered any damage by it are at liberty to make themselves amends at their own discretion and by their own force. They are at liberty *to take so much of the offenders' goods as is equal in value to what they have lost*, and the law of nature will give them property in the goods so taken; but in a state of civil society, if both the offenders and the sufferers are under the protection of the same society, their right of obtaining reparation *is restrained and becomes subject to the civil jurisdiction.*"

Absolute governments may punish their subjects by the direct exercise of the sovereign power, but no government can do this which claims to be free.

For the punishment of crime the Constitution provides *civil tribunals* and has provided a civil force to bring the offender before its judgment bar, and if this civil force be insufficient by reason of the strength of the offender, then there is a military force provided to bring all offenders, *not collectively or by States*, but *individually*, *before the courts of the land*, and there they can be deprived of their property, their liberty, or their life!

Surely no one will contend that the grants of power in the Constitution authorizing Congress "to declare war, to grant letters of marque and reprisals," &c., confers on Congress the authority to declare war against any State of this Union or any number of citizens of any State or to

authorize any citizen of this Union to make reprisals upon another citizen.

We are left in no doubt upon this subject, for when the proposition for *authorizing the exercise of the military force of the General Government against a delinquent State* was being considered Mr. Madison *opposed it, saying "that it looked too much like the power to declare war, and would probably be considered by the party against whom it was used as a dissolution of the compact."* He moved the postponement of this question, which was unanimously agreed to, and was never again brought before the convention.

Could Congress use this power and declare war against any State or any citizen of the Union? Could it grant letters of marque and reprisal to war upon the citizens, one against another? Then, truly, as was forcibly expressed by a Senator, if this be our political system, it is not worth much; surely it is not worth the cost of a terrible war.

Before Congress can claim to exercise this power of war over any portion of the American people it must first recognize the rebellion as a success—*their revolution accomplished and the Union dissolved.* In short, must concede to the rebellion—what no European power has ventured to do—that they have achieved their independence and have established a firm and stable government, against which it is no longer proper to war with the view of suppressing it.

For Congress to take that position and treat the rebellion as a *foreign nation* and continue the war from malice or vengeance is to become allies of the rebellion and ourselves *traitors, like them, to the Constitution.*

Fortunately, however, for civil liberty the Constitution confers ample powers upon the Government for its own preservation and just defense against all combinations of domestic foes.

While the Constitution withholds from Congress all power to declare war against any member of the Union,

that instrument confers on Congress ample authority to provide and maintain a *military force*, and upon the *President* ample authority to *use* that force in the defense of the nation by the suppression of insurrection or rebellion whenever the civil force is not sufficient for that end.

War may exist between the General Government and a portion of the American people, but under the Constitution it never did and never *can* exist except by armed resistance to its authority. Citizens may "*commit treason against the United States in levying war against them*," and thus (as in the present instance) involve the country in all the horrors of civil war; but they do not therefore become *enemies* in the sense of the law of nations—they are *still citizens of the United States* and *owe allegiance to this Government* and are *liable to punishment for their crimes, and they cannot escape from their allegiance nor their liability for punishment due their crimes* unless they flee the country of their birth, never again to look upon its flag! For, if *Congress is true to the Constitution*, they never *can* establish within the limits of the United States a government to protect and shield them.

If we will but comprehend the reason of the rule in the laws of nations, why one nation has the right to hold the persons and property of another responsible for the injuries inflicted by his government, I think it will be conceded that the rule has no application to a rebel in a civil war.

Writers on general jurisprudence have considered nations as independent, moral persons, living in a state of nature, where there is no common tribunal to settle controversies with other nations but that of force.

When an injury is inflicted upon one nation by another and reparation is withheld, there is no way to recover it except by war, because independent nations, from the very nature of things, are not subject to the civil tribunals of any other nation. A nation is in no otherwise responsible

than through her people. There is no means of recovering reparation except by holding them and their property, public and private, responsible to the offended nation. *These* constitute not only the wealth of a nation, but are the nation itself.

"As a nation consists of an aggregate of individuals, the property of the nation is the property of all its individual members, and as a consequence a claim to indemnification for injuries sustained by a *foreign state* may be satisfied by a seizure of the property of any of the individual members of *that state;* that by the law of nations the whole property of the individual members of a state is responsible for the debts or obligations of the state or of the sovereign.

"A nation has a complete right by the law of nature to take possession of the property of an enemy as far as the purpose of equitable satisfaction or the necessities of just warfare require, so as to obtain, in the well-known phrase, 'indemnity for the past and security for the future.'"

As Rutherforth states with more clearness than any other writer the principle of this rule in the law of nations, I will cite him fully on this point:

"But we acquire no right, corporeal or incorporeal, by the mere act of war, and it is a settled principle in the law of nations that without some natural or antecedent right, the mere taking of a thing by war is no right at all.

"In a war which is internally just, as a nation may take the person, so likewise it may seize upon the goods of the enemies, either movable or immovable, as far as such seizure is a necessary means to bring them to do what is right, but *what is seized only for this purpose does not become the property of the captors; the possession is just till the purpose for which the goods were taken is answered,* but as soon as the claims of the injured nation are satisfied the justice of the possession is at an end.

"The surest way of trying whether it is the claim of war

or the claim of a tacit consent in concluding a peace which gives us property in all such goods as are taken in war is to inquire what sort of right we have to them before peace is concluded.

"There is no law of nations which forbids our enemies to continue a war when no other cause of dispute remains besides our detention of such goods as we have taken in the war beyond the equivalent for damage and expenses. As the law of nature will allow this to be a just cause for continuing a war, so there is no practice of nations and no general opinion of mankind that determines otherwise; but if any law of nations had given us property in such goods, the same law must necessarily condemn the adverse nation for continuing a war merely because we would not give them up, for the design of such a war would be to take from us what the law of nations had made us own.

"This opinion that all goods which are taken in war are not strictly our own by any law of nations till peace is concluded—that is, till some consent, either express or tacit, has made them our own by the law of nature—seems to be the general opinion of mankind in respect to immovable goods, such as fortified towns or provinces which have been overrun in war.

"The captors are looked upon, *while the war lasts, to be only in possession* of them, and though this possession may help them to make a better bargain for themselves in a treaty of peace than they could do otherwise, yet the property which they have in things of this sort is deemed to be precarious until a treaty of peace has ascertained and established it.

"It is usual in treaties of peace to mention such immovable goods particularly, and the captors, if they acquire property in them, acquire it by express consent. We may therefore reasonably conclude that the property which the

captors have in all movable goods taken in war is likewise acquired in the same manner.

"The only difference is that immovable goods, which are generally the most important, are in the hands of the public and can readily be returned, whilst movable goods are of less consequence, are in private hands, and because they have either been consumed or have not been kept together cannot be returned so readily. For this reason, whilst the property in the former is adjusted by express consent, the property in the latter is left to pass from the original owners to the captors by tacit consent."

Here we perceive that this *right* gives to the captor only the *possession* and use of the property of an alien enemy during war, but the *title* does not pass, except by the *consent* of the nation to which the property belongs.

This *consent* is presumed in favor of movable goods on account of their perishable nature and the difficulty of identifying them; but this rule cannot be applied to *rebels* in a *civil war*, and for obvious reasons, because if the "rebels in arms" have not in fact dismembered the Union and formed an independent sovereignty they are today *citizens* of the United States and their property is a part of *its eminent domain;* therefore no law of war can confer upon the United States a higher claim to their property than it now has by the Constitution. To transfer the property from the citizens to the coffers of the Government would not increase the national wealth; it would add nothing to the national resources to take that which *is already ours;* but concede that the rebels have displaced the national sovereignty and become a *foreign nation*, then upon a reconquest of that territory our Government would enter upon their rights of sovereignty, take possession of their national domain and national revenues, seize and detain their citizens as prisoners and their property to compel them to do what is right; but if we destroy that rebel powe

altogether and retain the territory our claim to indemnity for the past and security for the future is satisfied.

Vattel says:

"The conqueror who takes a town or province from his enemy cannot justly acquire over it any other rights than such as belonged to the sovereign against whom he has taken up arms; but if the entire State be conquered, if the nation be subdued, * * * if the conqueror thinks proper to retain the sovereignty of the conquered State and has a right to retain it, * * * reason plainly evinces that he acquires no other rights by his conquest than such as belonged to the sovereign whom he has dispossessed, and on the *submission* of the people he is bound to govern them *according to the laws of the State.*"

Chancellor Kent says:

"It is a settled principle in the law and usage of nations that the inhabitants of a conquered country change their allegiance, and their relations to their former sovereign is dissolved, but *their relations to each other* and *their rights of property* not taken from them by orders of the conqueror remain undisturbed."

And he cites the Supreme Court as deciding that "the laws, usages, and municipal regulations in force at the time of the conquest or cession remain in force until changed by the new sovereign."

It follows, therefore, that the rebel territory, with the rights of persons and of property not destroyed by the struggle, fall at once under the protection of the Constitution and municipal laws.

We have had in our history but two occasions to exercise this right against foreign nations. In our war with Mexico, in which we sent our armies to her capital for the purpose of obtaining indemnity, *there* we respected *private rights* and abstained from the seizures of *private property*, and, being unable otherwise to obtain indemnity, we

took by conquest a portion of her territory, paying her in money for the excess over and above the amount of our claims for indemnity. Now, had a proposition been made in Congress to confiscate the property of the people of the conquered territory for the acts of the Mexican government, its repugnance to the laws of nations would have shocked the moral sense even of the Congress of that day.

The first act which broke their allegiance to the Mexican government and transferred it to the United States did, in the judgment of all publicists, bar all claim on them for the acts of their former government.

But in one respect this civil war does resemble a war with a foreign nation. The insurgents have subjugated some eleven States of the Union and have expelled all national and State authority and have enforced acquiescence and qualified allegiance to their arms and revolutionary government.

This calls for the exercise of new duties; *new*, I mean, from the fact that there was never before any necessity on the part of our Government for their exercise.

But, though they are *new*, we cannot mistake our way if we will only consider the nature of this civil strife and how far the relations of the citizen is affected while the national authority remains displaced by the rebel force.

On this point Senator Sumner cites from Grotius:

"The first and most necessary partition of war is this—that war is *private, public*, and *mixed*. Public war is that which is carried on under the authority of him who has jurisdiction; private, that which is not so; *mixed, that which is public on one side and private on the other.*"

And he says:

"In these few words of this great authority will be found that very discrimination which enters into the present discussion. The war in which we are now engaged * * * is 'mixed'—that is, public on one side and private on the

other. On the side of the United States it is under the authority of the Government, and is therefore 'public;' on the other side it is without the sanction of any recognized government, and is therefore 'private.' In other words, the Government of the United States may claim for itself all belligerent rights, while it may refuse them to the other side."

This is a false inference from the *misapplied* principle of Grotius. Rutherforth, the recognized expositor of Grotius, in commenting upon this *very passage* in its application to civil war, says:

"If any one should ask whether these internal wars of a civil society are public or private or mixed, we must certainly answer that, in the language of the law of nations, they are neither; for since this law takes no notice of what passes within a civil society—as far as what passes there has no reference to the rest of mankind—it has no occasion to mention wars of this sort, and therefore gives them no name. It does not so much as call them *wars*, and much less does it rank them under the head of *public* or *private* or *mixed*.

"The law of nations does not call them wars, not because they are not wars but because they are such acts as do not come within its view, and as it has therefore given no name to. They have certainly the nature of war, for they are contentions by force. Common usage likewise has given them this name and calls them *civil wars;* 'and if we attend to the nature of the act we shall find that civil wars may be either *public*, mixed, or *private*.'

"A civil war may be called a public one when the heads of each party are respectively considered by their own people as *public persons*. A rebellion may be called a mixed war when one of the parties is under the conduct of a public person and the other consists of private persons.

It may be called a private one when there is no subjection on either side."

According to this very principle of Grotius, a civil strife partakes of the nature of a public war whenever it is carried on against the Government by an organized force, acting through regular constituted authorities, regarded and accepted by the rebels as public persons. It is then a contest between the lawful Government, on one side, and an *unlawful*, but *de facto*, government, on the other.

Now, to claim that this rebellion is "private" on their side because their government is not a "*recognized* government" shows a most singular confusion of principles in the mind of the Senator, for were their government "recognized" it would *then* cease to be a civil war at all and would become a public war between two foreign nations.

From the very nature of things, the claim to exercise a right is founded upon a corresponding obligation. Our Government cannot claim belligerent rights without *conceding* the existence of a power (call it what you may) that is under an obligation to *yield them*, and an obligation to yield implies a corresponding obligation on the other side. While a rebellion remains within bounds, manageable by the civil force or by the military force acting in aid of the civil authority, there is no claim to exercise or duty to yield *belligerent rights*, and the relation of no one to his government in the theater of the rebellion is affected in any way; but when a rebellion attains to such proportions as actually displaces all civil authority and subjects a portion of the territory to its dominion, the relations are purely *belligerent* and must remain *belligerent* until the civil authority is restored, for there can be no civil relations without authority to protect the citizen. Our Government can hold none whatever with the people of the subjugated States until the rebellion is suppressed and its authority reëstab-

lished. The fact that these rebels possess the military power competent to displace and *have* actually displaced all civil authority elevates their struggle to the dignity of war. It calls for the exertion by the Government of its military power, and it must deal with this strife for the present only with this military force. Martial law may be applied to all the sections of country where the rebellion has displaced the civil authority, and every citizen of the United States may be subjected to martial law; their property may be seized and used by the military power if the public safety shall require it, but private property of the rebels which may thus be captured is not by any law of nations nor cannot be by any act of Congress vested in the United States, unless upon the recognition of their independence as a nation, for by the rights of *postliminium* upon the destruction of the rebel power every person is restored to his former rights, and everything that has not passed beyond the jurisdiction of the United States which can be found and identified returns to its former state under the Constitution.

"The right of *postliminium*," says Vattel, "is that in virtue of which *persons and things* taken by the enemy are restored to their former state on coming again into the power of the nation to which they belonged.

"The sovereign is bound to protect the persons and property of his subjects and to defend them against the enemy. When, therefore, a subject or any part of his property has fallen into the enemy's possession, should any fortunate event bring them again into the sovereign's power it is undoubtedly his duty to restore them to their former condition, to reëstablish the persons in all their rights and obligations, to give back the effects to the owners; in a word, to replace everything on the same footing on which it stood previous to the enemy's capture.

"Among the Romans, indeed, slaves were not treated

like other movable property. They, by the rights of *postliminium*, were restored to their masters, even when the rest of the booty was detained. The reason of this is evident, for it was always easy to recognize a slave and ascertain to whom he belonged."

The rights of *postliminium* are not under the cognizance of the law of nations.

Manning, in speaking of usages of different nations, says:

"Thus it will be seen that no general rule obtains regarding *postliminium*. Different States have different regulations on this subject; and, as it is a question which concerns members of the same State rather than subjects of different States, its details belong to municipal law rather than the law of nations."

When, therefore, a rebel is brought again, either by force or by his own volition, under the power of the United States, the Government is by the Constitution bound to reëstablish him in all his rights and obligations, and, upon his submission to its authority, give back to him his property.

It is too clear for argument that, during the military occupation of any town, district, or State of the Union by an invading force of a foreign nation, Congress would have *no authority* to confiscate the property of any American citizen, inhabitant of that town, district, or State; and should the citizens, no matter from what motive, whether from instinct of self-preservation or from disloyalty, join the invading force and fight in its ranks against their country, they do not *thereby* become public enemies; they *do not forfeit their allegiance to the country;* they *cannot* defeat the country's claim to *punish them according to the laws of the land.* They cannot plead upon the trial for giving aid and comfort to the enemy that they were traitors and fought *willingly* against their flag, though they may *plead*, and *plead successfully*, that the temporary inability of the Government

to protect them against the superior hostile force constrained their temporary submission.

True, the military generals of our country cannot distinguish the *nationality* of the enemy in arms, but will capture or kill all alike until they surrender to the authority of the Government or flee beyond its frontiers; but the legislative power *must* distinguish a nationality, *must* recognize the American citizen, *must* recognize his constitutional rights to protection and his liability to punishment for crime. While it may hold the nation to which this foreign force belongs responsible for *indemnity* and security and may look to every citizen or subject owing allegiance to this power, it cannot look to its *own citizens, nor confiscate their property, nor hold them as hostages* in order to constrain a foreign government to make compensation for wrongs inflicted.

The same rules which apply to any portion of the citizens of the United States which may be subjugated by an *invading* force applies *now* to the citizens of the Southern States who are subjugated by the *rebel* force. The duty of allegiance and protection are reciprocal; therefore when a State loses the power to protect any portion of its territory and inhabitants by reason of the superior force of a hostile power, the people so reduced necessarily must yield obedience to the *de facto* government. Their property and persons are claimed by the conquerors, but their allegiance is not severed from their government unless the conquest is confirmed by the consent of the conquered.

Castine, in the State of Maine, was captured and held by the British forces in September, 1814, and continued in their exclusive possession until the treaty of peace, in 1815.

The Supreme Court decided that the sovereignty of the United States was *suspended*, and that the inhabitants passed under a *temporary allegiance to the British government.*

The Territory of Michigan was surrendered to the Brit-

ish government by General Hull on the 16th of August, 1812, and continued in its possession until September 30, 1813. During this time the American laws were continued in force and the civil officers who remained in the Territory were continued in office. Judge Witherill and other officers of the Territory were paid their full salaries during the period of the British occupation.

The citizens and civil officers of Michigan who remained and submitted to British authority were not regarded by our Government as enemies, but that was before the discovery of the theory of political *felo de se.*

Now, when a *revolted people* have actually expelled their lawful government and in its stead established a *de facto* one, the condition of the citizens is precisely the same as in the case of a lawful government expelled by a foreign force; therefore, while a government is unable to afford *protection* to its citizens, it *cannot* hold them responsible for any act they may commit *while under the pressure* of a usurping power.

What, now, are the *facts* in reference to this Southern rebellion?

Have not the rebels expelled every vestige of authority, both of the States and of the United States, and established over that territory their revolutionary government?

Have they not gibbeted, imprisoned in dungeons, or driven into exile all who would not submit to their despotism? For more than twelve months the Government of the United States has been unable to extend to these people the protection of its authority; *no flag* has been seen there—*no emblem of authority on the part of the United States to protect and shield them.* To punish these people for acts committed while under the dominion of this hostile force and while the Government of the United States was unable to protect them would be a flagrant violation of every principle of natural and political law. It would

place the authors and executioners of the injustice upon the scroll which bears to infamy the name of Jeffreys, the judicial murderer under Charles II.

No, no! what the United States may rightfully do is this: The President, upon the reëstablishment of the civil jurisdiction, may bring to trialand condign punishment the authors and instigators of this rebellion. If the law against treason is not deemed sufficiently just, in view of the enormity of their crime, Congress may provide the punishment for all who do not lay down their arms so soon as they can receive the protection of their Government. It may exclude them *forever* from all offices of honor or emolument; it may *fine, imprison, or execute them;* in short, it may declare any *punishment*, provided it works no corruption of blood or *forfeiture beyond the life* of the traitor.

Having established that the *responsibility of the people of the subjugated States* to the General Government *depends* upon *its power to extend protection over them*, I now propose to inquire *what are the relations of the General Government to the people where* the rebels have been subdued, but yet *before the civil authority has been reëstablished?*—a question, perhaps, of more importance than any which has ever engaged the attention of the American people.

We have effectually overcome the rebellion in some of the States and in many cities and districts of other States, and it is evident that within a short time, if Congress will but stop its career of violence against the Constitution, we will have overcome it in all the States.

It is not probable that the people will return within a short time to their allegiance or that the Government will be able to extend the civil authority over the *whole* of that territory. It will be the work of time.

A large class of these people have become *thoroughly alienated* from the Government, whether by the effort of demagogues or from whatever cause. A large class still

love the Union and cling to the precious memories of its past history, who *honestly believe* it is *aissolved* and *never can be restored.* Then there is another class who, shocked by the terrible power of the rebellion, *have lost all hope and confidence in the power of republican institutions.*

If Congress will but abstain from all interference, there is no *doubt* about the ability of the President and his patriotic army to suppress the rebellion in every part of the territory; but the difficulties are in restoring *peace* to this distracted country *after* the rebel armies are overthrown. This requires the exercise of the highest and noblest qualities of statesmen. I would have Congress make no mistake *here.* I would have them inaugurate no policy of *doubtful constitutionality.* Peace can only be restored to the country by extending to the people the shield of the Constitution. The union of these States *cannot* be restored under a *mutilated Constitution* or under a new or different one.

Now, until the protection of the Constitution is extended over the subjugated States and the civil authority is reëstablished the relations of the people to the Government must necessarily remain *purely military*—that is, *martial law* is the only law the Government can apply in the absence of civil authority.

The right to apply martial law to the citizens of the United States and subject them to military government is conferred by the clause of the Constitution authorizing the suspension of the privilege of the writ of *habeas corpus.*

There are several instances in which this power has been exercised in the history of this Government, and it was first used under the administration of President Washington during what was called the whiskey insurrection. It was used by General Wilkinson at the time of Burr's conspiracy, and by General Jackson in the war of 1812. General Scott applied martial law by military government in Mexico during our war with that country; but within the

United States the public safety never required the application of martial law to whole communities of citizens until the present rebellion.

The establishment of a military government in the States of Tennessee and North Carolina indicates the President's policy for the restoration of the subjugated States to their rights in the Union, and is, as I believe, the *only* policy which can by any possibility effect it.

A military government, when established over a territory, holds the whole population, as it were, prisoners of war, subject to the rules of war. Its operations are confined to military questions and subjects all civil relations to its supervision and control, though, in fact, it exercises no civil *authority*, and Congress can confer upon it none, as its very existence depends upon the absence of civil authority.

It may exercise over the people of a district who are subjected to its authority all the rights which military commanders may exercise over their prisoners, according to the rules of modern warfare. It may provide for their rigorous imprisonment or it may parole them. It may exercise the extreme rights of the code of war over the life, liberty, and property of every citizen who *revolts* against its authority; but it has *no right* to take the life or *confiscate* the property of the people who have *submitted* to its authority any more than a commander has to *murder* or *plunder* his prisoners, and Congress can confer upon it none; for Congress has no more power to interfere with the conduct of a military governor than it has to interfere with the ordinary operations of the army before an enemy. It is *not* for Congress to pursue our generals in the field and say where to plant this battery or what house shall be battered down, what field ploughed up by cannon, what cities shall be burned, or what country shall be laid waste.

The direction of the operations of war belongs *not* to the legislative department; the Constitution has vested it exclusively in the *President* as *Commander-in-Chief.*

It is only for Congress to raise and support an army sufficient for the suppression of the rebellion. It is the President's duty to *command and direct it.*

And this military force, *directed by the President*, may employ every means known to civilized warfare. It may subject all persons to martial law "when the public safety may require it," and seize and use all property within the field of its operations to annoy, to weaken, or destroy the rebellion, and this without a regard to the ownership of the property, whether friend or foe, and leave to the political power to settle with the claimants, according to their respective rights under law.

This is a fearful power, but *without which* no government can *live*, and, unfortunately, by it most free countries have been destroyed.

The authors of our Constitution understood this *much better* than the men in *this day*. They placed this power exclusively under the control of the *President*. The danger of confiding the military power *exclusively* to his hands was fully considered by them. They guarded against the *abuse* by vesting in *Congress* the exclusive authority to raise and support this military force, and they guarded against the abuse of Congress by withholding from it the authority to make appropriations for a longer period than two years.

Senator Howard asks:

"Have the people of the United States stripped themselves of all power to control the operations of the wars in which they may be involved? Is nothing left to their representatives but to furnish the men, the material, and the money, and are their orders as to the *mode* in which and the *purposes* for which these shall be used totally powerless

and void? And does the Constitution subject to the will of the President exclusively the use of the military force in all the details of the service?"

These very objections were urged by the opponents of the Constitution in the State conventions which adopted it.

Justice Story, in his commentaries upon this power of the President, says:

"Of all the cases and concerns of government the direction of *war* most peculiarly demands those qualities which distinguish the exercise of power by a *single hand.* Unity of plan, promptitude, activity, and decision are indispensable to success, and these can scarcely exist, *except when a single magistrate is intrusted exclusively with the power.* Even the coupling of the authority of an *executive council* with him in the exercise of such power enfeebles the system, divides the responsibility, and not unfrequently defeats every energetic measure. *Timidity, indecision, obstinacy,* and *pride of opinion* must mingle in all such councils and infuse a *torpor and sluggishness destructive of all military operations.*"

But the Senator takes another and a bolder step. He says:

"The *President is our general and bound to execute our behests, subject to the will of Congress, and liable for disobedience to be reduced at once to the condition of a private citizen and incapacitated to hold any office of honor or emolument under the Government.*"

The absolute supremacy of Congress is avowed by another Senator in these words:

"There is no limit over the power of Congress; it is *supreme,* and the ordinary provisions of the Constitution must *yield* as resolved by Congress."

I do not charge that there is a conspiracy in Congress to grasp the sword and overthrow republican institutions and establish upon its ruins a legislative despotism; but certain

it is that unless this claim is rebuked by the country it will end in one; for, if Congress can exercise this power during war, the war will never end except with the destruction of liberty. Grant the power during war, and Congress will continue the war for the sake of the power, for the annals of the world record no instances where the usurpers of power have ever voluntarily laid it down. When Congress emancipates the slaves and confiscates the estates of the proprietors and apportions them to the poor and the slaves in order to fill the South with "Northern industry and Northern principles," it will continue the war in order to enforce its enactments.

Senator Sumner will not have Congress "fasten upon itself *the restraints of the Constitution.*" He will not have it "repeat the ancient tyranny which compelled its victims to fight in chains." Unless wiser counsels shall prevail or unless restrained by the President, Congress, "*unchained by the Constitution,*" will move its armies swiftly over the liberties of the country, both South and North. Our legislators who would disregard the constitutional guarantees of liberty may learn a lesson of Frederick the Great, who desired to remove a windmill which stood before the center window of his favorite palace at Pozdam, but could not induce the miller to sell it. The king, irritated, threatened the owner to force him to consent. "*There is a supreme court in Berlin,*" answered the miller. The king was silent, and the mill stands to this day, an annoyance to the palace, but one of the *best monuments* which an absolute monarch ever erected to himself.

The authors of our Constitution, witnessing the slavery of every people in every age by the union of all powers, legislative, executive, and judicial, in one body, and with a consummate knowledge of the philosophy of government, distributed its powers into three departments—legislative, executive, and judicial—defining the respective spheres of

each with such precision that it is impossible to misunderstand it.

Despotism is inevitable wherever power is lodged in a single body, whether in one or in many, whether in a single executive or a numerous legislative body.

That "we, the people of the United States," do not exert our power directly, but by representative bodies, severally restricted by a written Constitution to certain specific duties, constitutes the *peculiar merit* of our form of government, and its successful working hitherto has been the proud boast of Americans as *their contribution* to the science of free government, the first and only one ever known in the history of the world. Shall it be the last? The last of all the ages, the last of all the lands? And shall our Union, rent by factions, after all pass away—pass like a star that sets to rise no more, no more forever?

Henry Polkinhorn, Printer, Washington.

Although Miss Anna Ella Carroll has lived and died without succeeding in collecting from the Government payment for her nobly earned literary work, it would seem that simple honesty would require its immediate payment to her sister and heir, Miss Mary Henry Carroll, whose years of labor and devotion sustained and cheered our benefactress through all her declining years.

CHAPTER V.

LETTERS TO ANNA ELLA CARROLL.

On receiving the paper on the "Relation of the Government to its Revolted Citizens," being then absent from Washington, I wrote Miss Carroll that I felt rather dismayed at finding she had not used her influence for the freedom of the slave, but had rather brought forward the obstacles in the way. It seemed to me, as far as slavery was concerned, its abolition was obligatory, as the Constitution had made it the fundamental and paramount duty of the General Government to secure to every State a republican form of government, and that could not be a republican form of government where one class of its people held another class in slavery. However, at the time the discussion had been necessary, and the record was very interesting.

I asked her also whether some passages might not be construed somewhat as a personal attack on Sumner.

I received the following reply:

931 NEW HAMPSHIRE AVENUE, *July* 7, 1891.

You are entirely mistaken, dear friend, as regards my writings. At the time they were written no one was able to predict the result of the war.

The essay to which you refer, in regard to Mr. Sumner and others, was, as stated in the memorial of '78, written expressly to meet the views of the President, and he was the first person to whom it was sent as soon as printed. I remember it perfectly. They came in late on a Saturday night. On Monday early I went up to the Capitol,

handed Mr. Lincoln a copy, and received his very warmest thanks. It was then at once distributed in both houses of Congress.

Mr. Sumner, whom I well knew, so far from being offended, paid me a very handsome compliment upon the pamphlet, and no one ever thought of anything but kindness in all I had done.

At a great deal of personal sacrifice I freed my own slaves before the war, and when the laws of the State of Maryland prohibited it from being done unless they were sent to Liberia, which I absolutely refused should ever be done in that case.

I wish I were able (as you suggest) to pen my biography, which, if properly executed, would, I know, be interesting; but at this time I could not do it, owing to the extraordinary condition of my arm and hand.

Hoping to hear from you soon, I am most sincerely and affectionately, yours, A. E. CARROLL.

There is such a wealth of letters to Miss Carroll from distinguished political and literary men that to give even a portion of them would swell the volume beyond the proposed limits. Most of them can be found in the successive Congressional memorials. There is only space to add here a very few in addition to those given in the previous volume.

Among Miss Carroll's papers the following statement exists, in her own handwriting, of a conversation with General Grant, with whom Miss Carroll always remained on very friendly terms. The General never opposed her claim, but advised her to continue to bring it before Congress:

Conversation Between General U. S. Grant and A. E. Carroll.

It was in December, soon after Congress met. I was introduced by Hon. Reverdy Johnson, then United States Senator, to General Grant. I told him my purpose in seeing him was to ascertain what he knew of the Tennessee campaign, the plan of which I considered myself to have originated in the winter of 1862 and which was carried out in the following spring.

He told me he could in a few words tell all he knew. He said Badeau, who was then writing his history, had been ill and obliged to abandon it for the present; that all he knew of the Tennessee plan was in that book; that he had never read a line of it and did not propose to do more than read what appertained to himself; that he knew nothing of the Tennessee until he was ordered up that river by the general then in command at St. Louis, General Halleck; that he would advise me to defer, or rather to wait the action of Congress, until the aforesaid book was issued, and that would contain all he knew of that campaign. He was very cordial; seemed much interested, and wished me to make Mrs. Grant and himself a visit as soon as I could do so. I said I had thought it but just to claim in history the part I had taken. He said he thought I was right, and that I should be wanting in what was due to me if I did not do so.

This interview led me to delay any action by Congress. When the book came out there was nothing in it that impaired any statement I had made. When he was asked by a friend of mine to recommend the payment of my bill caused by great expenses incurred in going to the West, &c., he declined on the ground that he might be called on to express an opinion, which he wished to avoid, and so it went on until General Rawlings came into the Department of War.

A. E. CARROLL.

Letter from Hon. J. T. Headley, the Distinguished Historian of the Civil War, to Miss A. E. Carroll.

NEWBURGH, *February 6, 1873.*

MY DEAR MADAM: I am much obliged to you for the pamphlet you sent me.

I never knew before with whom the plan of the campaign up the Tennessee river originated. There seemed to be a mystery attached to it that I could not solve.

Though General Buell sent me an immense amount of documents relating to this campaign, I could find no reference to the change of plan. Afterwards I saw it attributed to Halleck, which I knew to be false, and I noticed that he never corroborated it.

It is strange that after all my research it has rested with you to enlighten me. Money cannot pay for the plan of that campaign. I doubt not Congress will show, not liberaality, but some justice in the matter.

Yours very sincerely, J. T. HEADLEY.

Conversing with Miss Carroll concerning the loss of her papers, twice stolen from the desks of the military committees, as testified by Samuel Hunt, secretary of the Senate Military Committee (see page 117 of the first volumne), it was suggested that she should write concerning this loss to General Bragg, still living and residing in Wisconsin. She did so, receiving in response a most friendly letter expressing his astonishment that there could be any question about the letters. From this we give the following:

Extracts from a Letter from General Edward S. Bragg to Miss Carroll.

FOND DU LAC, WISCONSIN, *April* 26, 1891.

MY DEAR MISS CARROLL: The authenticity of the letters of Assistant Secretary of War Scott, Senator Wade,

and other men of prominence printed in your memorial to Congress in support of claim for compensation for services in the war is beyond question. They were before the Committee of Military Affairs (H. R.) and were examined and considered by them. The claim was scouted because it was to the War Department absurd to consider for a moment that a woman's knowledge of topography and strategic lines led the advance of the warriors, young and old, "who saved the country, in discovering the lines of the Cumberland as a most feasible one in making advance into the enemy's country, they having the command of the Mississippi river. Military men doff their hats with grace and pleasure to woman, but to surrender claim to anything in the way of personal glory in their profession to a woman—that is quite another thing!" That I may not be misunderstood, I repeat I have seen and read the originals of those letters when considering a bill for your relief in Mititary Committee of H. R. "The committee made a favorable report on the facts."

Wishing you a speedy restoration to good health, in which Mrs. Bragg joins me,

I am very sincerely your friend,

EDW. S. BRAGG.

Stanton summed up Miss Carroll's services tersely and truly when he said of her, "Her course was the most remarkable in the war. She found herself, got no pay, and did the great work that made others famous."

(See page 123 of the first volume.)

CHAPTER VI.

CLOSING YEARS.

When I first made the acquaintance of Miss Anna Ella Carroll in 1890, though a confirmed invalid she was still bright and mentally active. Although she had almost lost her voice and had wholly lost her hearing, her intellect remained undimmed and her memory of past events, even in their details, was wonderful.

We could only converse by writing, but her clear intellect and large-heartedness were a constant delight, and the writing had the advantage that I could gather up the records of the conversation and keep them for reference.

When the first advanced sheets of the Biography were submitted to her she was greatly surprised, but after some demur as to publishing facts of her personal history, she gave her approval to the statements and desired that copies should be sent to members of her own family and a few intimate friends.

Thereafter I used to take her notices of the work and the letters of interest that we were constantly receiving, and she was greatly cheered by the warm expressions of regard and admiration that came to her even from the most distant States. Finding that the visits were a pleasure to her and eagerly anticipated, I fell into the habit of spending a short time with her every Sunday afternoon, a prac-

tice continued every winter up to the last. During the week she read regularly and with avidity the New York *World*, and took great interest in all political questions.

The idea of suffrage for women was comparatively new to her, and we had many a discussion, often ending in a hearty laugh, when I turned upon her her own theories and assured her that I should make a good suffragist of her finally. She admitted that very possibly it might be so, but she lived largely in the past and in past ideas.

When the suffrage meetings and Society for the Advancement for Women held their sessions in Washington a lively interest for her was evinced, and prominent ladies would request the pleasure of an introduction to her, which was always willingly accorded. Each one came away delighted at the interview, wondering at the brightness and geniality preserved through so long an illness and at so advanced an age.

An account published in the *Inter-Ocean* in 1891 by Miss Isabel Howland gives a graphic account of one of these visits. It is as follows:

WASHINGTON, *May 30.*

To the Editor:

No home in Washington offers to the visitor a more cordial reception than that of the Carroll sisters. On New Hampshire avenue, near its opening upon Washington Square, stands a block of houses with plats of green in front. One of these houses shelters the Carrolls. It was the good fortune of the writer on a certain afternoon lately to find herself, with a friend, pulling the door-bell of this house.

Admitted to the parlor, the time of waiting passed in admiring the taste and intelligence exhibited in the paintings and classic photographs upon the walls, the furnishings of the room, the books upon the table. These last silent witnesses for or against the culture of the family here bore examination. Among others, now forgotten, were Woodbury's Emerson and Keats' poems. The air of the room was made sweet by a large bunch of syringa blossoms before the grate.

After a short delay summons came from the invalid and we went upstairs.

Is there any one who does not know the name of Anna Ella Carroll? Shame to us it is that there are many who do not know it. Shame to us that Grant and Sherman and Sheridan and all the rest of the men who figured as leaders in our late civil war are familiar to every household in the United States, and Anna Ella Carroll is strange to those same households. Anna Ella Carroll, that big-brained Maryland woman, saved the Union. There is not the shadow of a doubt that it was she who planned the Tennessee campaign, the move which brought success to the Government arms. No one who takes the trouble to look into the proofs of this statement attempts to deny it. The Court of Claims does not. No Congressional committee has ever done so. They cannot. Letters of the men who had the conduct of the war are still in existence which declare that to Miss Carroll belongs the glory of the famous strategic movement; but for thirty years this woman has been sending in to the Congress of the United States her appeal for justice and for thirty years Congress has adjourned without taking action. Hundreds of old soldiers, hundreds of old soldiers' wives have asked the Government for help and it has been given to them lavishly. Miss Carroll, for her incomparable services of writing, publish-

ing, and circulating war documents (following the direction of the President and the Secretary of War), and finally of proposing the Tennessee campaign, has never been granted a single dollar. In the thirty years she has grown old, has lost her health and the use of her limbs. She spends her days in bed. Her hearing is entirely gone and her voice is much affected, but her interest in "the claim" is as keen and fresh as ever.

We had heard all this and expected to be saddened by the sight of Miss Carroll in her present condition. The contrast of the reality with the anticipation was delightful. The invalid's room was bright and cheerful. A large bay window faced the west. From the bed, as we entered, there looked out a face irradiated with such a beautiful smile that one in the sunshine of it was ready to forget age, deafness, harshness of voice, invalidism—everything but its surpassing sweetness. So long as the memory of that visit remains, the smile with which we were greeted will make a halo about it. The efficient colored nurse, who is always beside her, brought chairs close to the bed and placed pencils and paper before us, Miss Carroll being too deaf to hear the visitor's voice. Sitting beside her, our eyes continuously wandered to the lovely hair, soft, white, and fluffy, which lay in little curls about her face, and was coiled in a loose knot high on the head.

She did not talk much herself, but eagerly received the papers upon which we had written. When anything especially pleased her she showed it by a warm pressure of the hand.

We spoke of her biography, which Miss Blackwell had written and which was just out, of the claim, and of their contemplated moving, which she was dreading.

On the wall opposite the bed hung an oil portrait of herself when a girl. There was surprisingly little difference

between it and the older face upon the pillows in its setting of white hair and fascinating smile.

Before we left Miss Carroll's sister Mary came in from her work at the Treasury Department. Miss Mary writes letters every day from 9 until 4, and with the salary thus earned supports the pleasant home. The affection between the two sisters is lovely to witness and is exhibited on Miss Mary's side in the most devoted care and unceasing attentions. Though always very weary, she never fails to spend an hour each evening writing to her sister. Miss Mary is a highly cultivated and delightful person, finding time between the hours of work at the Treasury to keep up with the thought of the times.

When we rose to go the Carroll hospitality, a relic of the free-hearted life of old plantation days, came to the front in the cordial invitation from Miss Carroll to repeat the visit. "Come again," she said; "come and stay to dinner. You will be welcome any time, any day—always." And we left with an extraordinarily warm feeling about the heart for having made a half-hour's call upon strangers.

The biography above referred to has just been published by Judd & Detweiler, of Washington. It is warmly welcomed by the few who realize what Miss Carroll did at the time of the war and the way her claim has been disregarded by Congress. Others, who have pooh-hooed at the idea of a woman being equal to such work, will find in it plain statements which cannot be refuted without assailing the honesty and sincerity of such men as General Bragg, the Hon. Benjamin F. Wade, Thomas A. Scott, Reverdy Johnson, etc. No true history of our civil war will be written until the name of Anna Ella Carroll is given a place there. Time will prove her right to it; but we wish that justice might be done while she is living.

ISABEL HOWLAND.

Miss Carroll frequently referred to one and another of her friendly visitors and was delighted to hear news of them. During one of my last visits to her, in 1893, she called my attention to a sketch upon the mantlepiece of a quaint little country church, in whose cemetery her father, Governor Thomas King Carroll; her mother, and a brother and sister had been laid to rest. It was old Trinity church, on Church creek, about eight miles from Cambridge, on the eastern shore of Chesapeake bay.

This interesting little church is said to be, with one or two exceptions, the oldest church in the United States. The kneeling-cushions and the ancient silver communion service sent over from England by "Good Queen Anne" are still in use. In that little cemetery she now lies beside her father and her mother.

Almost to the close of her illness Miss Carroll remained wonderfully bright and able to enjoy the visits of her friends. Occasionally she spoke of herself as a very happy woman to have had secured to her a comfortable home and to have received all through her illness the devoted attention and tender care of her beloved sister.

Never a murmur, never a word of repining, but gradually her daily reading was intermitted and writing became more fatiguing.

An access of illness near the close of 1893 reduced her vitality, and in February of 1894 it became evident that she was failing. On the 17th she lapsed into an unconscious condition, from which she never rallied, but quietly ceased to breathe on the 18th without pain or struggle. The next

day she lay beautifully arrayed in the little parlor of 718 Twenty-first street, her last home in Washington. The soft white curls still clustered about her lofty brow, a sheaf of wheat lay at her feet, a bouquet of fragrant violets were clasped in those beautiful hands that had done such noble work for her country at the time of its direst need. The warm patriot heart had ceased to beat. As I left her I turned at the parlor door for the last look. A friend stood at her head giving last fond touches with a face so transfigured with loving tenderness that it looked to me like an angel hovering over her.

Good-bye once more, dear friend and noble-hearted woman! You have joined the sacred army of the veterans and martyrs of our national cause. We will not forget you, and the future historian shall make known the undying glory of your life!"

On the evening of the 21st, accompanied by two of her sisters, Miss Carroll's earthly form was conveyed to Baltimore, and on a beautiful moonlight night, on the steamer of the Eastern Shore, the sorrowing little party glided sadly down the Chesapeake bay to Cambridge. There they were met by relatives and friends desiring to look once more upon the face of one who had always been to them a glory and a pride.

On the following day the venerated form of the beloved sister and friend was conveyed to the ancient church, surrounded by its quiet cemetery. These grounds, at one time very lovely, are still in good preservation. Washed by the waters of the stream to which the church gives its

name and framed in a circlet of huge oaks, even more ancient than the church itself, the sacred quiet of this lovely resting-place for the dead shed a soothing influence upon the sorrowing human hearts as they bade a final farewell to the beloved sister and left her in her chosen resting-place in the family burying ground beside her father and her mother.

And there she awaits the monument that will surely be erected at some future day in grateful remembrance of our National Benefactress.

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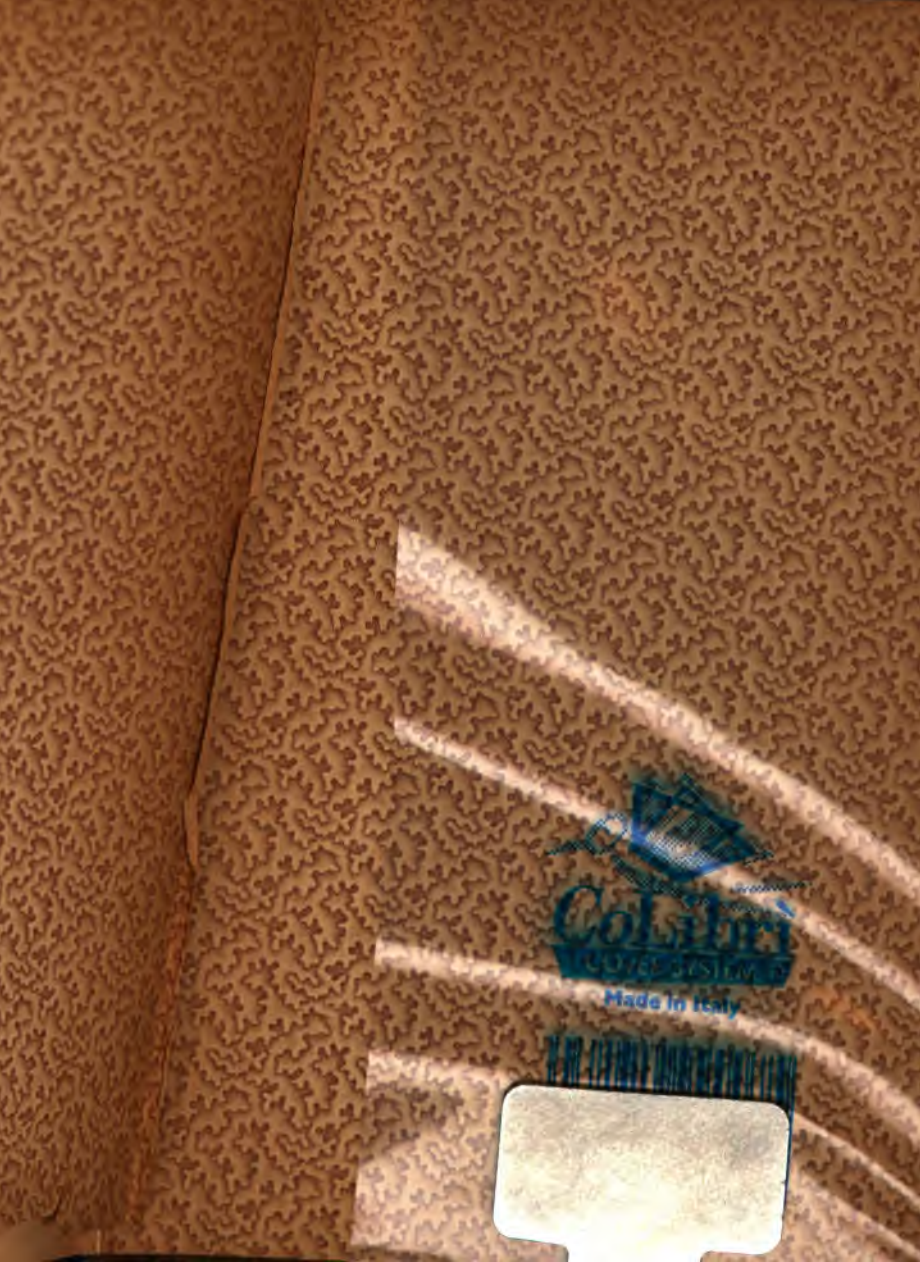
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